

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, BL

Instructed by: John Davis

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES: Mr. Richard Law Nesbitt, SC

Mr. John O'Donnell, SC

Mr. Conleth Bradley, BL.

Mr. Diarmuid Rossa Phelan, BL.

Instructed by Matthew Shaw

Chief State Solicitors Office

FOR DENIS O'BRIEN: Mr. Eoin McGonigal, SC

Mr. Gerry Kelly, SC

Instructed by: Eoin O'Connell

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Kelly Noone & Co.

Solicitors

OFFICIAL REPORTER: Mary McKeon

SCOPISTS: Aoife Downes & Ralph Sproxton

I N D E X

Witness: Examination: Question No.:

Fintan Towey Mr. Coughlan 1 - 467

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 14TH
MAY, 2003, AT 11AM:

CONTINUATION OF EXAMINATION OF FINTAN TOWEY BY
MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Towey, if we go back to the first
draft evaluation report in Book 46.

A. Okay.

Q. And if we go to page 46, this is Table 18, the
conversion of marks to points. And above the table,
just under the subheading 5.4: "The results based on
a conversion of marks to points," and it reads, "Also
a weighting mechanism was agreed prior to the closing
date for quantitative purposes" which this
narrative describes "as evident from both Table 17 and
18. If the marks (A, B, C, D, and E) are converted to
arabic numbers" etc. you can see that particular
point there. That particular text appears to suggest
that the weights which are carried in the left-hand
column opposite each dimension in the table, do you
see that?

A. Yes.

Q. Are the weightings which were agreed for quantitative
purposes, as they say, "As evident from Table 17 and
18," and we see the same weights in the left-hand
column in Table 17, isn't that correct?

A. That's what the text says, yes.

Q. That's what the text says. Do you know how that came about, that text?

A. It was written, I believe, by Mr. Andersen.

Q. Did that arise from whatever discussion took place in Copenhagen on the 28th September of 1995?

A. I don't recall a direct link between that text and a discussion.

Q. Well, it would appear from that particular text, that what Mr. Andersen was describing here was the application of the weights on these two tables, isn't that correct? The weights, which were attributable to the weights agreed for quantitative purposes, isn't that right?

A. That's what he refers to, yes.

Q. And it's the same weights which appear on the previous page, page 45 in Table 17, which he, again, from that text, describes as being the weighting mechanism agreed for quantitative purposes, isn't that right?

A. It's the same weighting, yes.

Q. And the text describes it as being the weighting on Table 17 and Table 18 as being the ones agreed for quantitative purposes, is that right?

A. That's the way it's described, yes.

Q. Now, can you throw any light on how that came about, other than that Mr. Andersen did this?

A. Well, I mean

Q. Did it arise from any discussion, did it, that you can remember, or did it

A. Well, clearly, I mean, the issue of converting the sorry, the marks, the letters into points, clearly that was agreed. The question of a distortion of a qualitative evaluation, I don't specifically recall Mr. Andersen making this point, but I do recall that he that he was initially opposed to the idea.

Q. Opposed to the idea?

A. Opposed to the idea of converting the letters into numbers. But I don't recall any of his arguments I suppose, more accurately, what I recall is that I didn't feel that he made any convincing argument.

Q. Well, whatever about his opposition, Mr. Brennan's view, and you agreed with Mr. Brennan's view about this, was the view which prevailed?

A. Yes.

Q. And having thought about it overnight, can you did your memory improve or did you or are you able to throw any light on whether this discussion took place before the subtotalling and the totalling on Table 16?

A. I can't say, I can't say with any precision.

Q. Now, turning for a moment to Table 16 on page 44, I think we dealt yesterday with the situation which would have arisen if you had discussed the application of numbers and weightings before you dealt with the subtotalling and grand total on Table 16, so we have

dealt with that yesterday we dealt with that

yesterday, you remember us discussing it?

A. Yes.

Q. I am just trying to come at it another way, then, if

I may. I am just trying to understand this table, if

it occurred by means of applying a judgement in the

first instance, before the Table 18 situation arose.

You can't be sure which way it occurred, is that

right?

A. I don't recall which way it occurred, no.

Q. But even looking at it from the point of view of, in

the first instance, applying judgement to the aspects

whereby to the dimensions whereby you would arrive

at a subtotal for the aspects, do you understand me?

A. Yes.

Q. Taking the first aspect, which was the marketing

aspect, and there are no weights in this particular

table, isn't that right?

A. Correct, yeah.

Q. But that if you were to adopt the procedure which you

had adopted in marking the indicators and then

bringing the indicators into dimensions, you would

have to, in exercising the judgement, perhaps have to

consider which of the dimensions were more important,

without actually giving a specific weighting to them

now, but which were more important in terms of the

descending order of the criteria in paragraph 19,

would that be fair to say?

A. Well, if we had looked at the question of marking a subtotal here, I don't think we could have done that without having regard to the weightings that we knew.

Q. Yes, I understand that, but there are no weightings here. This is the first point we can agree on, there are no weightings here, isn't that right? There are no weightings shown here?

A. There are no weightings shown, that's correct.

Q. The text doesn't describe the use of any weightings, that I can see anyway?

A. The text in this report relating to this table? I think that's probably true, yes.

Q. But and what I am trying to do is to tease out a situation, really, that you could, perhaps, still approach the subtotals by way of the application of judgement, bearing in mind that some dimensions were more significant because they were in a higher position in the descending order, in the criteria in paragraph 19?

A. You could do that, yes.

Q. Just as when you were dealing when you were converting the indicators into the subtotals for the dimensions, as you said, you had to bear in mind, by way of discussion, which indicator might be more significant or more important in arriving at the dimension, isn't that right?

A. Yes.

Q. Now, I suppose the one that if we take the first aspect, first, the marketing aspect, and in those four dimensions, tariffs is more significant than the others, isn't that correct, in terms of the descending order of importance in the criteria?

A. Well, without looking at the weighting, you can't

Q. Just looking at their position in the criteria, even. I know the weighting as well. But without actually applying a specific weighting, because you could say, "I can't apply a specific weighting to a letter," for example?

A. No, what I am saying is that market development forms part of the first selection criteria.

Q. It does. It does, yes.

A. So in that sense, I mean, in isolation from the weighting, you can't say that market development or that tariffs is more important than market development.

Q. Right. Well, tariffs was a single criteria, isn't that right? Market development was part of a criteria?

A. That's right.

Q. I am just trying to tease it out now in terms of just trying to understand or to inquire into how you might arrive at a judgement, because I am trying to understand, if there was a judgement, how it was

arrived at?

A. Yes.

Q. So market development was part of a criteria, tariffs

was a single criteria. So just, if people were

discussing and arguing about that, they might say,

look, you know, sort of, in this particular or it

would be possible to say or put forward this argument,

that in this particular aspect, tariffs is the

more is the more significant or the most

significant dimension here in arriving at a judgement,

because market development is part of a criteria?

A. Well, I mean

Q. You could put forward

A. You could put forward that view, you could put forward

other views, but you could put forward that view.

Q. And perhaps not an unreasonable view; you couldn't say

that it was an unreasonable or an irrational view to

put forward in discussing the matter?

A. No, it's not irrational, but in terms of the order of

priority of the criteria, you could also take a view

that market development forms half of the first

selection criteria, whereas tariffs is the third

criteria. So then, you have to take a view on, well,

okay, which of these is the most important?

Q. Well, if you were to take that sort of an approach,

you might come up with a view, then, that, and of

course you couldn't perhaps put out of your mind the

weightings, that market development was half of a criteria which you were going to give, say, 30% or thereabouts, to, isn't that right?

A. Yes, that's correct, yes.

Q. And tariffs was something you were going to give, you know, under 20%, about 18%. I am using them loosely now because you are going to be exercising a judgement?

A. Yeah, okay. I am not particularly clear on what you are doing now, because I had understood that you were approaching this independently of the weightings.

Q. Well, independently of the weightings. Let's approach it independently of the weightings. Market development is half of a criteria?

A. Yes.

Q. Tariffs is a whole criteria?

A. It is.

Q. Market development is half of a criteria that is ranked first?

A. Yes.

Q. Tariffs is the third ranking criteria?

A. Yes.

Q. You could, I suppose, end up with a consensus that, well, then, in looking at this, they could be equal?

A. Yes, you could

Q. That might be a consensus that could be arrived at?

A. That's a consensus, potentially.

Q. And therefore, you might take the view, look, that in relation to A3 and A5, the A for market development is the same, or there or thereabouts, for the B for tariffs, you could take that sort of view?

A. Sorry, that the sorry, can you say that to me again, that the A for market development

Q. If they are the same?

A. Yes.

Q. Is the same as the B for tariffs. You see, it's very hard to understand how the A/B do you see that A/B there?

A. Yes, I do.

Q. It's very hard to understand how that was arrived at?

A. Yes.

Q. You can't remember how it was arrived at?

A. I can't remember how it was arrived at, no. But it would have been some kind of process.

Q. And continue on down the table in relation to the technical aspects, perhaps fairly reasonable there how the subtotals, even in exercising a judgement, might have been arrived at, wouldn't you think?

Now, we know that we know that John McQuaid said they did it mathematically, but again, looking at this, you might sort of say, yeah, not unreasonable?

A. Maybe. I mean, you could ask the question, how straight As give rise to an A/B?

Q. This is in a qualitative process, of course?

A. A qualitative process.

Q. A qualitative process, this particular isn't that right?

A. Yes.

Q. Then you go to the financial aspects, and that's fairly straightforward, I think?

A. Yes.

Q. And then you go to the management aspects, and you see A3 with an A, and A5 with a B. Can you explain, then, how, on the bottom line sorry, on the grand total, again one might understand how A3 got a B there. Can you explain how the A/B was arrived at on the grand total there for A5?

A. No.

Q. You can't?

A. As I say, I mean, I don't recall how exactly we completed this table, or when.

Q. You could, I think, understand my difficulty in understanding how it was arrived at, and you can't throw any light, even today, as to how it could have been arrived at?

A. That's correct, yes. Sorry, just to be clear on that, I mean, I can't throw any light on my recollection of how we arrived at it.

Q. You can't throw any light on it today, how you arrived at it. I know you have no recollection?

A. I could speculate as to how it was arrived at.

Q. Well, how could it have been arrived at?

A. The subtotals?

Q. The subtotals in the first instance?

A. Yeah, I mean, it could have been arrived at by trying to take a view, taking account of the weighting model of the relative importance of the criteria.

Q. Well, how would that be? Because if you were to try to apply the weightings, it certainly would be virtually impossible to arrive at an A/B for the subtotal for marketing aspect, and approaching it that way, I would suggest to you that the grand total at the bottom would probably be two Bs for A3 and A5. But anyway, that's speculation.

Now, in this first evaluation report, Table 16 is presented as the results based on aspects, dimensions and indicators, isn't that right?

A. Yes.

Q. And as we have seen, those aspects were grouped around the criteria in paragraph 19 of the RFP?

A. Yes.

Q. Described as so. And if you go to page 45, then, point 5.3: "The results based on a regrouping of the criteria," but the text continues, "In order to investigate whether the conclusions of the evaluators are consolidated on the basis of section 19 of the RFP document, the evaluators have carried out a separate conformance testing."

So can I take it what that text indicates is that

Table 17 is an exercise carried out to be a

conformance test of what occurs on Table 16?

A. That's what that suggests.

Q. That's what the text is saying?

A. Yes.

Q. Can you tell me, first of all, how the grand total

line was arrived at?

A. On Table 17, I think we may have arrived at this one

by a process of discussing the award of marks at the

dimension level, and trying to take account, as best

we could, of the weighting.

Q. How did you do that, applying a weighting to a letter?

A. What I think that we did was that we looked at how A3 and A5 might be divided.

Q. And wasn't that the problem? Wasn't that the problem

that existed at Copenhagen, that it was impossible to

divide A3 and A5, and you were looking for ways to try

and divide them?

A. No, we had a view that they were divided on the basis

of the scoring of the dimensions.

Q. Was that an impression?

A. Well, no. My understanding my recollection is that

in relation to the first selection criteria, we took a

view that they ranked equally, because under the three

dimensions which were weighed equally, they each

scored one A and two Bs. So that didn't serve to

divide the applications.

On the technical aspects, A5 was clearly superior, scoring a straight A, whereas A3 was, let's say, halfway between a B and a C.

On tariffs, A3 was clearly superior, scoring one grade higher than A5.

Licence payment, obviously, didn't serve to divide them.

Coverage didn't help to divide them.

Roaming didn't.

On performance guarantees, A5 was clearly superior; and on frequency efficiency, there was no differentiation.

So I believe what we did was that we took a view that it was clear that since A5 was clearly superior in technical aspects, which had a higher rating than tariffs, and since it was clearly superior on performance guarantees, that A5 was the superior application.

I believe that was the starting point and that we went on and ranked other applications relative to that.

Q. I see. So the grand total that you obtained there, the B, and the B with an arrow up, which just, in your view, was a higher B, I suppose, would that be a fair way of putting it?

A. Yes, B plus, B minus, so to speak.

Q. Well, B up whatever way you want to look at it.

A. Okay.

Q. But that that arose as a result of looking at the grades which had been obtained on dimensions, and trying to figure them out by looking at what A3 and A5 had got on the various dimensions, isn't that correct?

A. And the weighting model.

Q. Well, the weighting model to the extent that it had some it reflected the descending order of importance of the criteria rather than the application of the weighting model to letters, would that be

A. Well, I mean, obviously we were conscious of the weighting we knew exactly what the weighting model was, and we knew that we were looking at straight As on technical, with a weight of 20 for A5, as against a mark somewhere between a B and a C for A3 on technical. And that on tariffs, that A3, with the weighting of 18, A3 was superior to A5. So if we leave aside the performance guarantees at the moment, where there was a clear superiority on the part of A5, and that had a weighting, of course, of 5%, but leaving that aside for the moment, it was clear that the technical superiority of A5, at one-and-a-half grade, so to speak, with the weighting of 20, outweighed the tariff superiority of A3 by one grade with a weighting of 18.

Q. Yes, I understand that. But that was, in effect, if you take, for example, looking at the tariff position,

in exercising a judgement, because you say that you ranked everybody this was for ranking purposes, and you ranked everybody else, then, relative to those two, would that be

A. Yes, I think that's

Q. That would be roughly the way it went?

A. Yes.

Q. So that in looking at the tariffs, leaving aside the question of the B or the C or the, perhaps even the A for A6, what you were looking was trying to distinguish between A3 and A5 at this stage, isn't that right?

A. That's correct, yes.

Q. So can I take it you took the view that, in relation to those, that A3 was the better, was the best?

A. Sorry, A5 was the best.

Q. A5 was the best?

A. Yes.

Q. So irrespective of them being graded a B, for the purpose of the exercise you were doing, for ranking, you were ranking them the best from the point of view of tariffs, isn't that right?

A. Sorry, I don't understand that when you say "the best from the point of view of tariffs," because A3 was the best under tariffs.

Q. It was graded as a B, but it was the best. That was the way you were looking at it. You were trying to

separate A5 and A3?

A. Yes.

Q. From the point of view of tariffs, A3 was the best, on tariffs. A5 was the best on

A. Yes.

Q. technical?

A. Yes.

Q. So I am just trying to understand now from the point of view of ranking them, then, take the technical, A5 was the best. Leave aside the score they got, that was going to carry a weighting of 20, isn't that right?

A. Yes.

Q. A3 was the best in tariffs, that carried a weighting of 18, isn't that right?

A. Yes.

Q. So in trying to separate them here, you had, in your own mind, am I right in thinking, therefore, a separation of 20 as opposed to 18, on that?

A. No.

Q. Right. Well, what was going on in your mind, so, can you tell me?

A. That under the technical dimensions, that A5 was a grade-and-a-half better than A3, but on the tariff dimension, that A3 was a grade better than A5.

Therefore, what was going on was that a grade-and-a-half is a wider differentiation than a

grade.

CHAIRMAN: You are saying there was a marginally more comfortable win in a marginally more important contest setting

A. Marginally more important context. I would say a grade-and-a-half is a significantly more comfort

CHAIRMAN: Without getting into nuances, I see your point.

Q. MR. COUGHLAN: Well, what you were doing, this was on a soft scale, of course, isn't that right?

A. On the basis of the letters, yes.

Q. Was there any other basis, on this table I mean now?

A. On the basis of this table, no, but, I mean, clearly,

I think that I myself would have been thinking in terms of numbers during this process, thus

Q. You see, that is

A. one-and-a-half versus one.

Q. And isn't that the reality of the situation, that both you and Martin Brennan approached all of this on the basis of numbers, and that that had the effect of, or must have had the effect, when it had an effect on you, when you exercised what was to be a judgement based on soft scoring, both on Table 16 and Table 17, would that be fair to say?

A. I am not sure what exactly you mean by that. And as I say, in relation to Table 16, I don't have a particular memory. But Table 17

Q. Well, you say you always had numbers in your mind?

A. Yes.

Q. So doesn't it seem, doesn't it now seem probable that you, or you and Martin Brennan, took the view about what was arrived at in Table 18 before you considered Table 16 and what appears in Table 17. Doesn't that appear to be probably what happened?

A. I don't believe that we constructed Table 18 before Table 17.

Q. I am not talking about constructing I am not talking about constructing it. If you look at Table 18, it's the same as Table 17. The only thing is that there are point scorings at the bottom, do you see? I am taking it they are probably the same in some way. They arose

A. Yes, oh, yes, okay, yes.

Q. They arose as a result of the thinking?

A. Yes.

Q. And that you and Martin Brennan always approached this from the point of view of numbers, and that that was how you viewed it and that that was done in your minds, and perhaps in discussion, before you arrived at the judgements which are recorded on Table 16?

A. Well, as I say, the sequencing I am not sure about, but in Table 17, I think what you say in relation to my thought process, as I have described them myself, I think it's broadly accurate, as I understand it.

Q. And if that be so, it would appear that this particular evaluation, this first version, this particular evaluation report is, at the very least, inaccurate in describing what's happened?

A. I don't follow what you are saying there.

Q. This report records that the comparative evaluation of the applicants was carried out, and we know about the breaking down of the aspects into dimensions, the dimensions into indicators?

A. Yes.

Q. It describes that?

A. Yes.

Q. It then describes about how that result was then brought about, and that is contained in Table 16, isn't that right, that's what the report describes?

A. That's what the report describes, yes.

Q. The report then goes on to describe that, what is headed "The results based on a regrouping of the criteria," that in order to investigate whether the conclusions, that is the conclusions arrived at in Table 16, are consolidated on the basis of paragraph 19 of the RFP document, the evaluators have carried out a separate conformance test. Not exercising any new judgements or approach to arrive at a result, but a conformance test. That's what this report describes, isn't it?

A. That's what it describes, yes.

Q. And it further goes on to describe, at page 46, that "After a weighting mechanism was agreed prior to the closing date for quantitative purposes, if the marks A, B, C, D, E are converted to arabic numbers, it could be calculated which applicant came out with the highest score by points, although such a calculation distorts the idea of a qualitative evaluation."

Then it goes on: "In order to check the results, this quantification of the results has been carried out," and that describes a further development of what has been described, on Table 17, as the conformance testing, isn't that right?

A. Yes.

Q. And it would appear from your evidence, now, that it is probable that matters worked in reverse order?

A. They may have done, yeah, I am not clear on the sequencing.

Q. Very good.

Now, before I just want to come back to one other matter, it won't take very long, but before I do, from all of the evidence which we have heard here from members of the PTGSM, and from the notes we have of the meetings of the PTGSM on the minute of the 9th and Margaret O'Keeffe's note, I think we have one other document which I am going to ask about which were some suggested, I don't know what they were, some suggested approaches there is a memorandum around the 12th or

the 13th, I don't know if it was ever sent to Andersen. Nothing significant turns on it, in any event. From the minute of the meeting of the 23rd, and the notes of either Mr. Sean McMahon, the notes that we have seen made by Mr. Riordan or Mr. Buggy on draft evaluation reports, it doesn't seem to be recorded anywhere that the members of the PTGSM were informed that this was how the process unfolded in Copenhagen on the 28th. Do you know if they were?

A. I don't specifically recall the way in which this particular discussion evolved at Copenhagen. I don't recall that being laid out. Now, that's not to say it wasn't, and I would very much expect that we would have described our views in relation to the necessity to group the criteria in accordance with paragraph 19 and to apply the weighting model. I mean, I can't remember it, but I would be amazed if that didn't happen.

Q. I understand that. I understand that. But what I am asking you specifically is, do you remember ever telling the PTGSM, the other members of the group, that the probability appears to be now, that it was approached in a manner whereby what is Table 18 was how the matter was approached by you and Martin Brennan

A. Oh, I feel that that was made absolutely clear

Q. before, before you arrived at Table 16?

A. Well

Q. I understand that you said you made it clear that you did that, but doesn't it now appear that that was all done before you arrived at what was to be the exercise of judgements based on the comparative evaluation of the applications?

A. Just to be clear, my evidence isn't precise as to where as to when Table 16 was produced, okay? I am not sure when it was produced. For example, I said, it may have been the case that we looked at a marking proposed by Michael Andersen, it may have been the case that we marked it on a speculative basis. I don't know, because, as I say, my dominant memory, my far dominant memory is the reaction to the table; whether it was the bare tables with the dimensions, or whether it was the table with a grand total proposed by Michael Andersen, or whether it was a table which we completed on a speculative basis, I don't know, okay. But, I mean, what I do know, obviously, is that the overall ranking is consistent, so I am not sure whether it was marked on a speculative basis which turned out to be consistent, but what I am clear on is that it was our view that Table 18 was the decision basis.

Q. Well, you see, what the report describes is what this report describes, isn't that correct, was that the result is on Table 16, isn't that right?

A. That's what it describes, yes.

Q. And that Table 17 is a conformance test, and that Table 18 is putting into what Mr. Andersen leave aside what Mr. Andersen putting it into numbers to arrive at a scoring on numbers?

A. Right, okay, yes.

Q. Now, if it happened, and you or do you accept that it's probable, because what was in your mind the whole time was numbers, it's probable that you approached it from the numbers point of view first, and then worked back to arrive at Table 16, Table 17?

A. Not Table 17. Table 17

Q. Table 17

A. Table 17 and 18

Q. They are the same?

A. Okay. It's Table 16 that I am not sure about.

Q. If and the point I am trying to make to you the whole time is this: This report is representing that table as being the result and the others being conformance tests.

A. Right.

Q. If you approached it and I am calling 17 and 18 the same for the moment, because in your mind it was always numbers?

A. Yes.

Q. If you approach it that way, what Mr. Andersen has described as a calculation which distorts the idea of

a qualitative evaluation, and we know the reason why somebody like Mr. Andersen would perhaps put such a health warning in, because there is the danger of, first of all, losing the accuracy of applying weighting numbers to soft scoring where hard data may be lost, so that if you approached it that way

A. I don't believe there are many instances of that.

Q. Well, whether there were or there weren't, this is why he was saying it; that if that be so, and we saw a clear example of it on the question of the experience of the applicants

A. Experience, I know the indicator you are talking about.

Q. We saw a clear example of it there?

A. Yes.

Q. But if that be so, and if that was in your mind in arriving at the subtotals and the grand total on Table 16, if it occurred after you had been through that other process, you were, in bringing your judgement to bear in arriving at this table, bringing the same distorting effect into this. In effect, I am suggesting to you that it was shoehorning that result on Table 16 to arrive at the ranking?

A. Well, I mean, how do you mean, "shoehorning"?

Q. Fitting it in, fitting it in, because might I suggest to you that however you might approach Table 16, when I ask you about how you exercise judgements and you

can't tell us how the A/B, particularly the A/B

under the marketing aspects was arrived at

A. Yes.

Q. anybody looking at that table might say, a reasonable judgement, or a rational judgement in arriving at the grand total might have been a B for A3 and a B for A5; that they were difficult to separate.

A. Yeah, okay.

Q. That's what I am saying.

A. Yeah, but you couldn't

Q. And the shoehorning is one that tweaks it just a little way, that we get A5 as a result of the numerical exercise in the minds of the people making the judgement. Just, do you see that, putting it as an A/B, and then, on the next table, a B up, I suppose an A/B and a B up would be the same.

A. I think I mean, I take your point in relation to the supply total on marketing aspects.

Q. It's not an unreasonable point to inquire about, I'd suggest?

A. But if we had felt that this table was important, and certainly my view was that it wasn't, in terms of the decision; the important tables were tables 17 and 18. But had we been looking at this table, I think you are right, that there is a question in relation to the subtotal for marketing aspects, but equivalently, I think there is a question in relation

to the subtotal for technical aspects in that A5, in my view, looking at these, should clearly be a straight A, no qualification.

Now, if we only had Table 16, if Table 17 or 18 didn't exist, I think that we would have been clearly of the view that the weighting would have to be applied to these dimensions, in order to produce transparency in relation to the ranking.

Q. Isn't that isn't that precisely what Mr. Andersen was saying was going to distort the idea of a qualitative evaluation? He clearly says it. And as you said, and as I think you already said, he opposed this approach, didn't he?

A. Yes, yeah, he had some difficulty initially with this approach, yes.

Q. He opposed this approach?

A. Yes. But that opposition was not it was not expressed in terms of the proposed regrouping of criteria in application of numbers. He opposed it but he didn't make any convincing arguments that we were departing in any way from a completely fair comparison with that analogy.

Q. Can you tell us what arguments he did make, or can you remember?

A. No, I don't recall exactly what arguments he did make, but I do recall myself and Martin Brennan being somewhat lost to understand his reluctance initially.

Q. Very good.

A. But he agreed to it. I mean, you know, there was a discussion. We set out our clear view, which it was clearly, obviously, related to the Government's view of the order of priorities, and he accepted it.

Q. Well, I think you have told us in your evidence before, that nothing would have been done without the clear imprimatur, in the whole process, of Andersens, and here was a situation where Andersen himself was opposed to something. But the view of Martin Brennan, and your view, as two members of the PTGSM, prevailed over his, isn't that correct?

A. No, he agreed.

Q. Your view prevailed; he opposed it.

MR. O'DONNELL: He agreed, he said it twice.

MR. COUGHLAN: We don't know what argument. You said he opposed it and your view prevailed, isn't that right?

A. He opposed it initially, and my recollection is that he accepted the arguments we put forward in relation to the need for transparency.

Q. But what is extremely important at this stage for the Tribunal to understand, then, is that when he produced this particular draft report, he pointed out that this had the effect of distorting the idea of a qualitative evaluation, isn't that right?

A. He did, yes.

Q. So he continued his health warning about it, isn't that right?

A. It's there in the report.

Q. But what this report doesn't tell us, and it appears that it was never told to any member of the Project Group, that this particular exercise probably preceded the work which gave rise to Table 16, the arriving at the subtotals and the grand total, which is portrayed in this draft evaluation report as being the result, isn't that right?

A. What I am saying is, I don't recall what exactly was put to the Project Group in that respect. So I am not saying that it wasn't, yeah.

Q. All right. No member of the Project Group has told us that, and we have been through this with them.

A. Okay.

Q. And we don't see any document which states that. And the one thing that's abundantly clear, isn't it, that this report doesn't say it, this draft of the report doesn't say it. This draft of the report reports

A. I know what this says.

Q. But that's the report. It's the draft but this is

A. What I am saying in my evidence is that I don't recall the exact sequencing.

Q. And if it happened sorry, I won't go over it, you have already dealt with it. If it happened as you

have described that it may have happened, this report is, at the very least, inaccurate in describing

A. If it happened the way it says in the report, it's accurate. If it happened a different way, it's not accurate.

Q. Very good.

Now, would you go back to table 38 for a moment, please, and it's just to ask you your knowledge it's the dimension sorry, I beg your pardon, page 38. And do you see the dimension finance?

A. I do, yes.

Q. And the indicators are under them?

A. Yes.

Q. Now, I think you were a member of this sub-group?

A. Yes.

Q. You attended a meeting in Copenhagen with Billy Riordan early September, isn't that right, 6/7 September, we think?

A. Around then, yes.

Q. And there was some preliminary discussion in the sub-group, is that right?

A. Yes.

Q. We then know that Mr. Riordan told us that he was he attended Copenhagen on 20/21 September, and that whatever work Andersens had done, hadn't been done anyway, and he didn't get to discuss any further,

or have any further discussion in the sub-group at that time, 20/21?

A. I would be surprised if there was no discussion in the sub-group, and I think, in fact, there was discussion.

I can remember a discussion, in relation to the second indicator.

Q. You can remember a discussion in relation to the second indicator?

A. Yes.

Q. Very good. And what was that discussion?

A. Well, this was where we looked at the financial strength of the consortia members, and I remember Andersens taking the view that the equitable approach to scoring under this, was to look at adequacy of financial strength, and that adequacy of financial strength would be assessed if there was a single strong member of the consortium that could, without question, see the project through. In other words, one member, to use his phrase, "with deep pockets," and I think there was a rule of thumb that an equity value of a billion, you know, was unquestionably adequate financial strength, but that we did look at other factors as well.

Q. Now, let's look at the text underneath. "Financial strength of consortia members..."

A. Yes.

Q. "... is a matter of "deep pockets" under the

assumption that the liability is not effectively

limited." What does that mean?

A. I take it, on reading it now, what that means is that on the assumption that the shareholder does not in some way limit its liability to the consortium or to the project.

Q. "When looking at an equity of the mother companies of the backers exceeding IRi½1 billion. A1, (Southwestern Bell, Tele Danmark, and through Detecon, Deutsche Telecom; 3 big german banks); A3, (Motorola, Unisource and ESB) and A4 (AT&T and Phillips), all have sufficiently 'deep pockets' to be awarded As."

Do you see that?

A. Yes.

Q. We know, for example, in the case of A3, Motorola, Unisource and the ESB, there was submitted a shareholders agreement whereby the other those shareholders agreed to subscribe for the shares of the smaller shareholder, that was Sigma, in the event of them not being able to subscribe, isn't that right?

A. I believe that may be correct.

Q. You can take that

A. Okay.

Q. Very good. A2's main backer, Comcast, has a negative equity, which also is the case with Bord na Mona, as the only main backer. RTE has a moderate equity," and it gives that. "A2 has thus been awarded an E. A5 is

backed by Telenor with an equity in excess of one billion pounds, and Communicorp with a negative equity which have been transformed to a B."

What does that mean, "transformed to a B"?

A. I believe what that means is that Andersens' proposed scoring was an A on the basis that Telenor was financially strong.

Q. Do you remember that?

A. I can't say specifically that I do.

Q. Could it have been a C?

A. Certainly I don't recall that, no.

Q. Then it goes on to deal with A6.

Now, nowhere there does it describe that if "one consortia member has deep pockets", does it?

A. It doesn't describe it there, no.

Q. No, it doesn't. And bearing in mind that you had A5 with Telenor, no question about it, about their financial strength, no question at all. Communicorp with a negative equity, a complete question mark over it; wouldn't that be the way you'd look at that particular consortium, in trying to arrive at a judgement?

A. Okay.

Q. And whether it be 40% or 50%, take it at 40%, no concern about the other 20% coming from investors, there was never going to be a concern about that, isn't that right?

A. Yes.

Q. What you had here was between these two particular members of the consortium, with no agreed or submitted shareholders agreement that one would take up the necessary investment of the other, if they couldn't subscribe. You had effectively a split, 50/50 between those two anyway, at a high level, isn't that right?

A. Yes.

Q. Over you described it over 35% being a high level?

A. Yes.

Q. Are you sure that there wasn't discussion around that being scored as a C, and that, as a result of some intervention, discussion, that it was transformed to a B as described here. Do you understand the question

A. I do.

Q. and why I'd ask it?

A. I can't recall specifically, but I do have a very clear memory of Andersens' rule of thumb, which I think you have mentioned twice, which is, you know, the equity of 1 billion. Obviously the use of the word "transformed" suggests that the scoring was something else first, and that a new scoring was given. So I would speculate, fairly confidently, that the proposed scoring was an A.

Q. You would speculate that?

A. Yes.

Q. That seems well, sorry, perhaps I'll put it this way: It seems, on the basis of the text in relation to all of the others, it seems to I might suggest to you, to be unusual that it would be an A?

A. I am sorry, if the rule of thumb is that equity exceeding 1 billion is what gets you an A, put it that way; if you had, in the second sentence "When looking at equity of the mother companies of the backers exceeding 1 billion "

Q. Of the backers

A. Yeah, "A1", and it names the companies; "A3", and it names the companies; "A4", and it names the companies, if that had a further text, "and A5," with Telenor in brackets, "all have been scored an A", then, I mean, you could see the consistency of the logic.

Q. But it doesn't have that?

A. No, no

Q. What I am suggesting to you sorry, I am trying to understand, you can't recollect what happened at this, is that correct?

A. I can't recollect.

Q. You can't recollect?

A. I can't recollect exactly, but what I am saying is that I do recall Andersens' proposed rule of thumb, one financially strong shareholder

Q. If you are speculating, what I am suggesting to you is that it is as valid a speculation to suggest that what

was initially proposed I am not quibbling about it,

I am just saying that it may have been initially

proposed that it would be a C, but as a result of

discussion, this particular judgement was arrived at.

Do you understand the point I am making, because I am

asking that in this context: If you go to and I am

not asking this question out of something which arose

in my own mind if you go to tab 39 in the same

book, and I think tab 40, you'll see handwritten

notes. Do you see

A. Yes.

Q. Now, the first one is Donal Buggy's handwritten notes,

that's at tab 39, and at tab 40 is Billy Riordan's.

And they are notes on this particular table.

A. Okay, yes.

Q. Now, you can see there, for financial strength, do you

see the B crossed out and a C inserted?

A. I do, yes.

Q. And likewise, I think if you go to Billy Riordan's

note over you see "financial strength," and he has

given his evidence about this, you see the B in

brackets and the C put in?

A. Yes.

Q. Now, these were two accountants, and there is text

also in these documents. Page 38, second paragraph,

"RTE english" very good. Then 4: "Telenor and

Communicorp, C from B as Communicorp doesn't have

sufficient strength for 50% share." Do you see that?

A. Yes.

Q. Then if you and, of course, as a result of that, you can see that he makes an alteration to the bottom line as well?

A. Yes.

Q. Now, if you go to Billy Riordan's handwritten note, and again we have looked at the table, you can see the B/C and you can see the same thing on the bottom line again; it's similar, but not the same as Donal Buggy's.

A. Yes.

Q. Now and then if you see further down on the text "Strength A5, Communicorp has negative equity as does A2's partners. This would indicate a C for A5 surely."

A. "Should indicate a C..."

Q. "This should indicate a C for A5 surely."

A. Yeah.

Q. Now, did you ever have any discussion with Billy Riordan or Donal Buggy about this, to your recollection?

A. I don't recall it.

Q. And this must have arisen after they received the and I think it must have arisen after they received the first draft evaluation?

A. Yeah, I see Billy Riordan's notes are described as

"Notes for meetings on 9 October," and on the top or towards the top right-hand corner of that, there is a phrase "Meeting with Donal Buggy".

Q. Yes, do you see that? They must have and that perhaps reflects the text and the tables?

A. Yeah, okay.

Q. Now, you don't ever recall having any discussion with them about this?

A. No.

Q. Or them bringing this matter to your attention?

A. I don't recall it, no.

Q. Can I take it if they had had such a discussion or brought matters to your attention, as members of the PTGSM, particularly ones coming from an accountancy background, it's something that would have to be discussed and consensus arrived at?

A. Absolutely, yeah. I mean, I would have had the view

Q. Particularly from their position, people coming with their specialty?

A. Yes, I mean, I would have had the view that Billy Riordan was our primary representative, if you like, on the financial sub-group.

Q. Now, we know that if you go over the tab, at tab 41, this was a memorandum which was sent by Donal Buggy and Billy Riordan to Andersen. You'll see the fax sheet as well, do you see that? And they make

certain references to various matters in the report.

And there is no particular reference made to this particular, obviously, discussion, which took place between Billy Riordan and Donal Buggy, and it appears to be similar views which they arrived at. You can see that. There is no

A. You are saying that they seem to arrive at similar views but that in this note to Andersen there is no mention of them, is that what you are saying?

Q. The notes Billy Riordan's and Donal Buggy's note, you point out it's a meeting between Donal Buggy and Billy Riordan?

A. Yes.

Q. And they seem to have arrived at similar views about this particular table?

A. Yes.

Q. There is no mention of that in the note to Andersen on the 9th October, 1995. Do you see that?

A. Yeah, I'll take your word on it.

Q. But you have no recollection of Billy Riordan or Donal Buggy having any discussion with you, as a member of the financial sub-group, about these particular matters?

A. I don't have a memory of it, no.

Q. And, as you say, if you had such a meeting, it's something particularly you considered Billy Riordan to be the lead man on your side, on the finance side,

it's something that you'd have had to consider and consider seriously?

A. If a serious concern was brought to my attention.

Q. Right. Because, I suppose, if you look at Donal Buggy's note, you see, that's the first note, you see there, page 37, you see "deep pockets" there, he is making a point that "Backers have sufficient financial strength in their own right." It's a point he seems to be making there?

A. Yes.

Q. Now, you have no recollection of a discussion.

Mr. Riordan certainly has no recollection of a discussion, I can tell you that. Mr. Riordan

A. Which discussion, may I ask?

Q. A discussion about Mr. Riordan has very little recollection about many discussions, but particularly about this discussion?

A. Okay.

Q. Or a discussion about this with you?

A. Okay.

Q. Or with anybody?

A. Okay.

Q. The only point I wish to raise with you about it is this: That if that view had prevailed, all it would have done would have been to, in fact, drive A3 and A5 even closer together, rather than allowing a situation to have them separated further, isn't that right, if

that view had prevailed?

A. If the view that it should have got a C, if A5 should have got a C, if this had prevailed and was agreed, it would have that effect, yes.

Q. What I am trying to figure out is, was Jon Bruel doing this on his own, arriving at this in the final stages, when obviously Billy Riordan, a member of the PTGSM, had noted a view which doesn't appear to be an illogical view, does it, and the reasoning which is given by both Billy Riordan and Donal Buggy, it doesn't appear an illogical view?

A. It's a view you could take.

Q. And a view that you'd have to give proper consideration to, bearing in mind it was coming from the accountants?

A. If that view was brought to attention, certainly it would have been an issue.

Q. Now, can I just ask you, for a moment, to return to the evaluation model, or the evaluation report, I beg your pardon, of the 3rd October. And if we could go to tab 35, and to that contains the annexes. And if we go to I know you didn't have Annex 2 at this stage, isn't that right? This is the methodology applied

A. I know that we didn't have some.

Q. I don't think you did.

A. Okay.

Q. And you go to Annex 3, which was the evaluation model, and that set out the evaluation model which had been adopted by the group at the beginning of June the 9th June of 1995, isn't that correct? You can take it it is, because we have read it word for word.

A. All right, okay.

Q. The typing is slightly different, but it's not 21 pages, but we have read it word for word. It's the same model that was adopted on the 9th June.

A. Okay.

Q. And you can see then at it would be page 11 in this annex?

A. Yes.

Q. You can see the vote-casting and weight matrix which was adopted relating to the quantitative evaluation, isn't that right?

A. Yes.

Q. And then page 13 contains the guide for the award of marks, and contains the same table, and then the interplay between quantitative and qualitative. It's all included here in the evaluation model, isn't that right?

A. Yes.

Q. And there is nothing wrong with that. It's purely an incorporation in the annex of a historical document, the model which was adopted, isn't that right?

A. Yes.

Q. That's all it is.

Now, if you go to the next draft of the evaluation report, that is the one of the 18th October of 1995 it's at tab 47 sorry, I beg your pardon, tab 46, but, in fact, I want you to go to tab 47, to the appendices first. And if you go to Appendix 3. I'll be coming back to the Appendix 2 in due course, but I just want you to go to Appendix 3 now for the moment, and that again includes the evaluation model, isn't that right?

A. Yes.

Q. Which again is the inclusion of a historical document, or purports to be the inclusion of a historical document?

A. Yes.

Q. Now, if you go to page 10, which includes what is the vote-casting and weight matrix: "The following table shows how the votes will be given for each of the indicators in the quantitative evaluation," then it sets them out?

A. Sorry, page 10?

Q. Sorry, the end of page 9 just describes it, sorry, I beg your pardon, and page 10 is the table.

A. Yeah.

Q. Can you tell me where the weights which appear on the right-hand column came from?

A. No.

Q. You can't?

A. No.

Q. They are certainly not the weights which are contained in that table in the first evaluation model, or the first evaluation report, I beg your pardon.

A. Yes.

Q. And what is contained in the first the Annex 3 to the first evaluation are the weights which were agreed in the document which was the evaluation model which was presented and adopted on the 9th June of 1995, isn't that correct?

A. They don't total to 100, is that right?

Q. No. They are different if you wish, we'll go through them. I'll just point out to you.

A. I don't know that it's necessary.

Q. They are different.

A. Okay.

Q. Certain of them are different?

A. If you say so. I am not contesting

Q. You don't know how that came about, do you?

A. No.

Q. Because, you can't as far as you know, there was no discussion about this, about these weights after the presentation of the first evaluation model, was there?

A. That's correct.

Q. And as far as you know sorry, there was no discussion about them. There was no discussion about

them?

A. Yes.

Q. And as this is meant to be, just the inclusion of a historical document, and as it is contained in the first, the annex to the first evaluation report, it would perhaps, you would think, be in the software of Andersens, wouldn't you, in that format, if they printed off the first one?

A. Yes.

Q. And you'd expect, again, that in including the evaluation model, you just print off what seeing as there had been no discussion about it?

A. Yes.

Q. So somebody had to change it. Well, Andersens had to change it in the first place, isn't that right?

A. Yes.

Q. And you don't know how they came to change it?

A. No, I don't, nor can I think of any rationale for changing it. I mean, you know, I could tell you that those weightings are consistent with what was applied in the qualitative model.

Q. That's precisely the point I want to come to.

A. In a sense, consistent.

Q. That's precisely what I want to come to.

A. Okay. They are not absolutely consistent, but they are being presented here in the context of the quantitative model, which, of course, had only been

run once and discussed once in my knowledge, and which, at this stage, as in 9th October, pretty much everybody had lost respect for it. So I can't explain it really, is what I am saying.

Q. That's the very point I was going to come to. They appear to reflect what was applied to the qualitative tables, isn't that right to the Table 17 and 18?

A. Yes.

Q. And the narrative in the model for table I suppose, it's Table 18, it changes position subsequently, but what we'll call Table 18 from the first report describes the application of weightings which had been agreed for the quantitative model, isn't that right? I'll go back to it if you wish?

A. No, it describes it in those terms.

Q. It describes it in those terms. There is no doubt about that. And it would appear, therefore, that whoever made these changes, made them to try and fit this particular table into the narrative, and into the what was contained in the qualitative table.

That appears to be the purpose for interfering with this historical document?

A. I can't throw any light on why this was done.

Q. Right.

A. For example, making it consistent with the qualitative evaluation

Q. Pardon?

A. In making this consistent with the qualitative evaluation, I can't understand what value that might have or what motivation that could have. I mean, like you say, a historical document was a historical document.

Q. Well, it's because the narrative describes the weighting, the narrative in the report describes the weightings as being the ones that were adopted for the quantitative model, isn't that right, that's what the narrative says, no doubt about it?

A. Yeah, that's what it says.

Q. And what it is trying to do well, sorry, what it appears to be doing is trying to fit the whole thing together, I am suggesting. That's what it appears to be, anyway.

A. I don't see what that would achieve.

Q. Well, we'll look at that in a moment. But what it is, clearly, and you agree, it is altering a historical document?

A. It is.

Q. No doubt about that. You see and we'll come to look at it in due course there was confusion about the weightings, wasn't there, at the meeting of the 23rd, perhaps? We do have some notes of Mr. Billy Riordan, for example, and Mr. Billy Riordan was putting in weightings opposite, whichever table it is, I'll come to it now in due course in the second

evaluation report, and what he was asking was, "Are we using the right weightings here at all?" this was just on the question of whether you should but "Are we using the right weightings here at all?" And he started writing in the weightings which appear at Annex 3 in the first evaluation report, and which appear in the documents of the evaluation model which was adopted on the 9th June of 1995. He was trying to put those because, it was said, the quantitative were adopted.

A. Okay.

Q. Do you remember the discussion about the weightings?

A. I don't remember there being confusion.

Q. You don't remember there being confusion?

A. No.

Q. I suppose for anybody, but particularly for a civil servant, it's of significance that there would be an alteration of a historical document in a report?

A. Yes.

Q. Whatever happened previously, leave aside the document for a moment, but whatever happened previously, did not occur on the basis that's on the quantitative side, I know your view about the quantitative evaluation whatever happened, did not take place on the basis of those weightings, on the quantitative side?

A. Whatever yes, I mean, the quantitative model that

was run on the 4th September, or whenever it was, was run with different weightings, that's correct.

Q. I don't think we need spend too much time on this, but could I just ask you, if you were involved or

At tab 45, there is a document there, "Comments on the presentation of the results by AMI of the evaluation of the GSM applications," and I understand that this is have you got it, tab 45?

A. Yes.

Q. We understand that this is Donal Buggy's writing, do you see the note, "Received from Maev Nic Lochlainn on 17/10/95". And there is an arrow then comments "Sent to AMI on 13/10/95". Do you recognise the document at all?

A. Do you know when this was produced?

Q. I don't, but perhaps we could take some perhaps before well, it had to be, I suppose, before the 13/10/95, or on the 13th. I am only well, before let's take before it, because it was sent to AMI on 13/10, according to this note. I don't know if it was.

A. Okay.

Q. I don't know if it was.

A. Okay. I mean, reacting to the style of it, it could have been a document produced in my division, by me, by Maev Nic Lochlainn, perhaps.

Q. Do you have any recollection of it yourself?

A. I mean, if I read it and saw it on the files in the context, I mean, it might trigger memories, but...

Q. Right.

A. I mean, it seems to be a reaction to the first evaluation report, so it may have been something produced arising from comments at or following the Project Group meeting on the 9th October. Perhaps following, since Andersens were there

Q. I don't think anything much turns I don't think anything significant really turns on it at the moment, but you don't recollect it, or you don't

A. It doesn't ring any particular bells, but that doesn't say I didn't produce it. I mean, I may have done, for example.

Q. Right.

Now, if you go tab 46, and this is the version which was dated the 18th.

A. Yes.

Q. Now, the introduction has been expanded a little from that contained in the first draft, but I don't think anything major turns on it. It's just

A. Okay.

Q. because, you know, this now contains Annex 2, for example, and matters of that nature, and there is a description.

And then, chapter 2 is an outline of the conduct of the competition process. And if I just might bring

you quickly down to page 6, 2.4, "The marketing and the nomination of the best application."

And it says: "That the nucleus of the evaluation was then commenced by the establishment of 10 subgroups, each dealing with one of the dimensions outlined in paragraph 19 of the RFP document, namely market development, coverage" it lists them all out.

"This approach was agreed prior to the closing date and is also part of the evaluation model adopted, see Appendix 3, except for the evaluation of the licence fee offered, which did not require sub-group meetings.

Each sub-group comprised members from the Department and consultants from Andersen Management International. In addition, the Department of Finance participated in sub-groups on financial key figures and performance guarantees. The subgroups were staffed such that they comprised different members and affiliates of the PTGSM with specific expertise in relation to the subjects to be evaluated.

"The next step in the evaluation was to invite for presentation of the applications, which was executed on 5 September, together with an agenda and a number of questions to the applicants. This was done on an equal basis to all such that one hour was reserved to a presentation of the business case behind the application, one hour was offered to answer requests, which were equally posed and worded to all applicants,

and one hour was reserved for the PTGSM to pose questions to the applicants. The presentation meetings were consecutively held as 6 separate meetings from the 11-14 September.

"After the presentation, the remaining part of the evaluation was conducted, in particular, on credibility, risks and sensitivities and the overall evaluation and final marking of the applications were completed.

"A draft report discussed on 9 October has, following the incorporation of comments from the PTGSM, culminated in this final report. As unanimous support was given by the PTGSM to the results of the evaluation, Andersen Management International was requested to submit this final report. It was also decided to present the quantitative and the qualitative parts of the evaluation in an integrated fashion in accordance with agreed procedures, see Appendices 2 and 3.

"It is the view of the Andersen Management International that the competition process had been conducted in such a way that a comparatively high degree of transparency, objectivity and non-discrimination has been achieved."

Now, that penultimate paragraph, can you throw any light as to how it got into this particular draft, that there was unanimous support given at the meeting

of the 9th October to the results of the evaluation?

A. Well, I mean, I don't specifically recall

Q. First of all, did that suggestion come from you for incorporation in the report?

A. It may have. I couldn't rule that out.

Q. Right.

A. I mean, clearly we were aiming towards an objective of unanimous support; that was I mean, that was the decision model for the Project Team. I don't remember any dissenting voice at that Project Group meeting, so I don't recall anybody saying that they believed that we hadn't got the correct result here, although, clearly, there was further work to be done on the report. So as regards how this particular paragraph evolved, I can't say exactly.

Q. Well, we have heard evidence from other members of the PTGSM that, first of all, Mr. O'Callaghan said he was never asked for

A. Mr.

Q. Mr. O'Callaghan says that nobody was asked for

A. I think I am aware of that particular piece of evidence, yes.

Q. their position. And we know from Mr. McMahon and his I think you have seen the note that he made on a minute as well, that unanimity wasn't subscribed, but anyway, we know all of that.

A. Okay.

Q. Now, before this draft arrived in the Department, which would have been on the 18th/19th October, Mr. O'Callaghan has informed the Tribunal that you informed him on the 17th that the Minister wanted to go to Government with the result on the following Tuesday; do you remember that?

A. Not specifically, no.

Q. So if that be so, you did inform Mr. O'Callaghan, you must have received that information from somebody else?

A. Yes.

Q. Probably Mr. Brennan, you think?

A. It would most likely be Mr. Brennan, but potentially others, but most likely.

Q. Potentially others, but most likely?

A. Yes.

Q. And that must have been a view which was communicated by the Minister as well, if he wanted to go to Cabinet the following Tuesday?

A. I expect so, yes.

Q. Now, I'll come to it when I am dealing with some notes which Mr. McMahon made, of the meeting of the 23rd, but I think they do record that Mr. Brennan stating that words to the effect, the Minister wants the result today but hasn't been promised one. Do you remember seeing I'll come and deal with it in due course?

A. The 23rd, okay.

Q. But that would seem to indicate that Mr. McMahon or the Minister, hadn't been promised a result, that Mr. Brennan, at least, was unsure whether he had a result to give to the Minister, do you understand me?

A. I understand what you are saying, yes.

Q. And that this, again, shows that the Minister was intervening to drive this process to a conclusion, when there was plenty of time, according to the critical path, to allow the PTGSM to do its work, isn't that right?

A. I don't think there is any doubt about the Minister being anxious to bring this to finality.

Q. And the only result the Minister could have been talking about was the one that we know that Martin Brennan had told him about the rankings, that you and Martin Brennan had believed you had brought back from Copenhagen, isn't that right?

A. I don't know the exact term in which Martin Brennan might have communicated that, but I presume there was some caveats.

Q. All right, the same thing

A. But the Minister, I mean yes, the Minister would have an expectation, perhaps.

CHAIRMAN: Five past two. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF FINTAN TOWEY BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Now, returning to the second draft, or

version of the evaluation model. We were at page 6.

We needn't concern ourselves with chapter 3. I think

that's again as per, as the first draft. It's the key

characteristics of the applications; I don't think

anything turns on that.

And then, if we go over again to what was Chapter 3 is

now Chapter 4, because of the inclusion of Chapter 2

in this particular this draft. Chapter 3 in the

first draft was the comparative evaluations of the

applications, Chapter 4 here. Again, just going

through it, and we have been through this portion of

it already, we see the marketing aspects, and then we

see the various dimensions, isn't that correct,

relating to that, and they are all as per the first

draft.

There is just one thing I wanted to ask you about. If

you go to page 36, this is the experience of the

applicant, and do you see Table 12 at page 36?

A. Yes.

Q. That contains six lines of boxes; isn't that right?

Now, if you look at 32 in the first draft, you can see

the text is the same, but do you see that in page 32

on the first draft, this table gives a more complete

table and gives the points we were discussing it

yesterday, remember, the points on the quantitative?

A. Yes.

Q. And this was all that was being taken into account on this particular matter. Do you see that?

A. Yes.

Q. And the bottom portion of that table, that's the final six lines, are removed from this particular draft. Do you know why?

A. No.

Q. Do you remember any discussion about removing them?

A. I don't. I don't recall discussion of it now.

Q. It could give rise to the question that it might be designed to obscure the fact that A3, getting a 5, and A5, getting a 9.5, nonetheless ended up with scores of A and C; it could give rise to that question, couldn't it?

A. You could take that view, but it may also be that a view was taken that the quantitative indicator wasn't a good indicator or wasn't didn't provide a fair means of assessing the relative experience of the different operators.

Q. No, but on that particular indicator, on that particular one, that was the only one that was considered. Remember, we looked at that

A. How do you mean, it was the only one that was considered?

Q. If we go back to it. The quantitative

experience go to page 34; you know the text "The quantitative experience of the application as a cellular operator in OECD member countries has also been defined as an indicator. The quantitative scoring that appears in Table 12 has been translated into the award of marks." Do you see that? "A3 getting the highest and A2 the lowest. This indicator has been weighted..."

A. Yeah.

Q. So that appears to be the only information that appears to have been taken in account for awarding marks for that indicator according to the text, anyway.

You see, what I am saying to you, from the text, it appears that the only information that was taken into account was that information which was the quantitative information

A. Yes, I see that.

Q. for that indicator, and on that, we know that A3 got an A and A5 got a C, notwithstanding that A5 A3 seems to be five times better than A3 appears to be five times better than A5; remember, we discussed this yesterday?

A. Yeah.

Q. Now the question I am asking you is, that full table appears in the first draft, and the scoring is given as an A and a C?

A. Yeah.

Q. That particular quantitative scoring, the scoring now, the 5 and the 0.97, is removed from the second draft.

The only question I am asking, you don't remember any discussion, you don't know why it was, and I am suggesting to you that it does give rise to the question of whether it was removed for the purpose of concealing the actual score and all that was used the actual marks, and all that was used to arrive at a scoring for the indicator. I am just asking, it gives rise to that question?

A. What I am saying to you is if you look at Table 12 in the first report, the first six lines relate to raw data collected from the application. The following lines relate to elements of the indicator tool in order to arrive at the score, which is on the bottom line.

Now, I am suggesting to you that it may well be the case as I have said, I don't specifically recall the discussions at this point but it may have been the case that we took a view that that particular indicator was not a fair or appropriate method of comparing the quality of experience. We may have taken that view.

Q. I understand that.

A. Now, I can't say for certain that we did take that view, but what I can say for certain is that I was not

in any way a party to any exercise in concealment. I wouldn't have any cause to be.

Q. You didn't prepare this you had no discussion which gave rise to the removal that you can recollect to the removal of that particular portion of Table 12 in the first draft?

A. I don't recall specifically being party to such a conversation. But what I do know is that at the time when we were discussing these reports, I had a far greater level of familiarity.

Q. I understand that. And nor do we see well, I'll have to double-check, or treble-check again, but nor do we see any memorandum or correspondence from you to Andersens making such a suggestion, as far as I can see, anyway.

A. Okay. It may be that Andersens took a view in revisiting the report, because after all, this first report was compiled at very short notice. I mean, it was compiled in quite a short space of time; isn't that correct?

Q. Yes.

A. So it may well be that Andersens, in revisiting this draft of the report, felt they hadn't faithfully represented the discussion that had taken place.

Q. I understand that.

A. What I am saying is, you know, you can produce a number of possible scenarios whereby this change took

place as distinct from your favourite one.

Q. I don't have a favourite.

CHAIRMAN: Well, all right, we needn't get...

A. Pardon me.

Q. MR. COUGHLAN: In fact, I see nothing wrong if you take the first draft where the full table is enclosed, right?

A. Yes.

Q. And you can explain it by way of text, for example. That's perfectly transparent.

A. Okay.

Q. That's what transparency is about.

A. Yes, okay.

Q. What I am suggesting to you here is by removing portion of this table, you in fact make it less transparent and perhaps somewhat opaque, because then all you have is a text, and there is no real understanding of where the starting point may have been and why. I am not saying that it was not justified

A. Okay.

Q. but why the scoring changed. Do you see the point I am making?

A. And what I am saying is it wasn't for the purposes of concealment.

Q. Do you know that?

A. I am quite positive that it was not for the purposes

of concealment.

Q. At least when Mr. Andersen asserts in the introduction that this is transparent, that in this this is an example of less transparency than existed in the first draft; isn't that right?

A. Okay.

Q. You have more information, and you had an explanation; you could accept the explanation in the text or not, as the case may be?

A. In the first draft

Q. In the first draft, you had

A. Sorry, there is a lack of transparency in the first draft.

Q. There is a lack of transparency?

A. Yes.

Q. Why?

A. Because the scores the quantitative points don't support the scoring in terms of letters.

Q. Yes, that, I suppose, was the first, where I jumped off at you yesterday in terms of confusion as to how you could have a situation where all that was being taken into account on this indicator in the qualitative assessment was this scoring, and it doesn't support the letters. I was asking you, and I accept that you could score it different you could, if there was some text or explanation for it, because I suppose that's what's envisaged in a qualitative

analysis; but you yourself have now said that those particular scores do not reflect sorry, those particular points do not reflect the scoring in the qualitative that were awarded in the qualitative indicator, an A and a C. And not only do they not support it, I suggest to you that and we spoke about this yesterday there is a massive loss of relativity as between A3 and A5, because it is five times better there, or four times better than A5; but when they get an A, which is the maximum you can get anyway, and they get that, the relativity is not maintained as between the points they scored and the letters or the scoring in the qualitative. Do you understand me, because a C an A is not four times better than a C. Do you understand the point?

A. Yes.

Q. Now, we talked about that yesterday. All I am asking now is that when you come that table is in the first model, there is a text, and there is the score awarded for that indicator on the qualitative?

A. Yes.

Q. We know that was done. All I am asking you about is that when it comes to the second model, you didn't have any discussion with Andersen that you remember, anyway to remove the second portion of that, which in fact gives you the points?

A. Yes.

Q. And that is removed and all we have is text, and what I am saying there is that you cannot see exactly what happened in the qualitative assessment because we don't have the starting point; do you understand?

A. Yes, and I am not disagreeing with that. What I am disagreeing with is the concealment hypothesis.

Q. I am asking a question. It gives rise to a question as to whether it was designed to conceal, for the very reason you have stated yourself, that the points there in the first draft do not support the C for A5 in the qualitative evaluation in the first draft. And that score continued all through the evaluation reports?

A. Yes.

Q. That's all I am asking you about. You yourself said it doesn't support it.

A. I am saying that the points scoring in that Table 12 does not support the award of marks on that scale

Q. Of a C?

A. That's correct, yes.

Q. That's all that was done, and that's all that was taken account in that indicator, is all I am saying, in that indicator.

A. I don't know that that's all that was taken into account.

Q. We have just read the text over and over again. Anyway, it's there

A. No, the point I am making is that there was a reason,

there was a reason for this.

Q. We can't see it.

A. I agree.

Q. That means if there was a reason, it's not transparent; it's opaque. We can't see it.

A. Yeah, but there is a difference between opacity and concealment.

Q. Very good; I take the point. But you'd wonder, or one would wonder why a portion of the table is removed in the second draft?

A. Yes.

Q. You'd even wonder yourself now, wouldn't you?

A. Yes, that's fair.

Q. Now, there was one matter, I suppose, it just occurred to me now, and I forget. It's just do you know the heading, the paragraph "Risks, sensitivities", etc. "Sensitivities, Risks, Credibility Factors"; do you know that chapter?

A. Yes.

Q. If you go to the first draft, at page 40 of the first draft.

A. Yes.

Q. And if you go to the second paragraph I'm not going to read the whole thing; we have read this over and over again. But unless you want to refer to particular portions of it, but if you go to the second paragraph, the middle of the second paragraph:

"Taking all the sensitivities defined in the tender specification into account, A5 still concerns a positive IRR. The weakest point concerning A5 is not related to the application as such but to the applicant, or more specifically to one of the consortium members, namely Communicorp"

A. Could I say, Mr. Coughlan, it's better to read the whole paragraph.

Q. "In general the credibility of A5 has been assessed as extremely high, as A5 is the applicant with the highest degree of documentation behind the business case and with much information evidenced. In addition, it can be stated that A5 does not have abnormal sensitivities in its business case. Taking all the sensitivities defined in the tender specification into account, A5 still earns a positive IRR. The weakest point concerning A5 is not related to the application as such, but to the applicant, or more specifically, to one of the consortium members, namely Communicorp, which has a negative equity. Should the consortium meet with temporary or permanent opposition, this could, in a worst-case situation, turn out to be critical, in particular concerning matters related to solvency."

Now, was that text put into this draft by Andersens, or was it as a result of a discussion between you, Mr. Brennan and Andersens?

A. The sensitivity analysis was conducted by Andersens.

And to my memory, nobody took any active role in it until Andersens produced

Q. Later on

A. until they produced their view, so it was from this point. Now, there would have been a process whereby Andersens would have informed the Project Team of the supplementary analysis it was undertaking, and the sensitivities and risks being analysed. So there would have been a general interchange in that sense and an acknowledgment of the issues being looked into.

Q. But the text

A. But in terms of the text

Q. That's Andersens'?

A. This is Andersens' text. Yes.

Q. Fine. Now, if you go page 44 of the draft of the 18th October, that's at Tab 46, and it's page 44.

First of all, what is contained in the original draft, the text which is contained in the original draft appears to be a reasonable enough assessment, doesn't it, would you think, of from your point of view, that the weakest A5 "The weakest point concerning A5 is not related to the application as such but to the applicant, or more specifically one of the consortium members, namely Communicorp, which has a negative equity; and should the consortium meet with temporary or permanent opposition, this could in a

worst-case situation turn out to be critical, in particular concerning matters relating to solvency."

Did you have any particular difficulty with that paragraph?

A. I don't believe so.

Q. When you saw it?

BRIEF POWER FAILURE

CHAIRMAN: Well, we can perhaps make do without the monitors if the realtime is back.

Q. MR. COUGHLAN: Now, if you look at this second draft, then, and there is inserted the word "A5's maybe weakest point" is not related to the application take your time; page 44.

A. Page 44. Okay, yeah.

Q. Do you see the word "maybe" has been introduced to the text?

A. Yeah.

Q. Perhaps it's a little inelegant, but doesn't it appear that it's conveying that perhaps it's not a weak point, may be a weak point, or its weakest point, or is it a suggestion that there are other weaker points?

I don't know.

A. I mean, from a credibility or a risk point of view, I wouldn't have thought there was any doubt, so I can't really shed any light of the addition of that word.

Q. It didn't come from you?

A. Well, as you say, it's inelegant, and I wonder if any

native English speaker would have added it.

CHAIRMAN: So it's Danish English, as far as you recall?

A. I can't say I recall, Chairman, but I mean, that would be my guess.

Q. MR. COUGHLAN: Right.

Then if we go to page 47, again, it's in the same form, isn't it, or format, as the 6.1, the results based on the aspects, dimensions and indicators; and we have Table 16, the same as Table 16 in the first draft, and the text is the same, and we also have the results based on business case sensitivities, risks and credibilities. We then have the conformance test, the result based on the regrouping; isn't that right?

A. Yes.

Q. And then we have the again the same as the first draft, the conversion of points to marks; isn't that right?

A. Yes.

Q. Now, let's start with Table 18, or we can deal with both Table 18 and Table 17 together, although in this particular draft numbers have been introduced for the letter, but that's the only they are the same.

A. Yes.

Q. And the dimensions are listed; isn't that correct?

A. Yes.

Q. In the order of criteria that's what listed in

the you can see that?

A. Yes.

Q. And we then have a weight applicable to each dimension corresponding, and if totalled, to the weights applicable to the criteria, is that right, in descending order? That's how it appears to be laid out, anyway.

A. Yes.

Q. And Andersen, at page 50, 6.4 again, uses the same text, "Also a weighting mechanism was agreed prior to the closing date, for quantitative purposes, as evident from both Table 17 and 18. If the marks (A, B, C, D) are converted to arabic numbers, it could be calculated which applicants come out with the highest score, measured by points, although such a calculation distorts the idea of a qualitative evaluation."

I am not going to back over the ground we have covered this morning about which came first or matters of that nature.

But what I want to ask you about now is this: Where did the weights for these dimensions come from?

CHAIRMAN: If we are going to lose a record, I'll certainly rise; I'll just give it a minute.

Proceed.

Q. MR. COUGHLAN: Can you assist us as to where the weights for these dimensions came from?

A. The weights for the selection criteria were decided by

the Project Group. The weights at the dimensions within the technical criteria were decided by the technical sub-group, and the weights within the market development and business plan criteria were decided by the sub-group which decided the final award of marks for that criterion.

Q. Who were they?

A. It was, as I recall, Martin Brennan, myself, Michael Andersen, and I think Jon Bruel.

Q. Right. So the only members of the PTGSM who agreed on these weightings for market development from Ireland were you and Martin Brennan?

A. And Andersens.

Q. Well, Andersens in fact, very interesting; I'll come back to the specific response which you gave, and it was to a specific question I think as to who was present when certain matters were conducted at Copenhagen, and you responded that you, Martin Brennan, Michael Andersen, and Jon Bruel were present. We know that Andersen opposed this particular approach to begin with; isn't that right?

A. To begin with.

Q. Right. Are you saying that he didn't participate in a discussion about weightings?

A. Well I believe he did, yes. I mean, I am trying to remember the point in time at which the approach to the weightings of the dimensions was agreed, and I

think I would need to reflect on it, but

Q. Yes, I think so. I'll bring you through it and I am not trying to catch you; I just want to bring you through it. Because if you look at the text, Andersen says "A weighting mechanism was agreed prior to the closing date for quantitative purposes as evident from Table 17 and 18."

I think we had much discussion about this. The clear wording of that particular text is that these are the weightings which were agreed for the quantitative purposes, and now they were being applied here. Isn't that what the text clearly states?

A. But

Q. Otherwise, why would

A. That breakdown of 10, 10, 10, that sub breakdown

Q. That's the one I want to find out about. That's the one I want to find out about, because leave aside the criteria for a moment, no difficulty, and whether it was, you know, 30, 20, 18, let's take the top 3 as ones you considered to be to be the significant ones when you were forming a judgement, that these are yeah, the top three were big significant ones, and ones always mentioned by the Minister, and ones that you yourself said that when you could speculate on trying to show how a judgement was arrived at in Table 17, that you took those into account as being the big ones in trying to separate A3 and A5; isn't

that right?

A. Mm-hmm.

Q. Now, whether it was 30, 20, 18 or whether the top one came to 32 and a half and it was renormalised or even bring it down to 30, you know, on the table that Andersen produced?

A. Yes.

Q. Leave that out of it. I am trying to understand how the subdivision took place, if you know what I mean, how the weight of 10, 10, 10 was arrived at, because it's not as Andersen describes it in the text.

Andersen describes something completely different in the text.

A. Okay, I have a general recollection that it was that it was agreed, and I presume that it was agreed on the basis of a view that we were looking at three dimensions which were considered to be more or less equal in importance, and that an appropriate way to come to an overview under that criterion was to weight each of them equally.

Q. Right. In arriving at that position, and do you have a recollection of this?

A. I recall that we agreed it.

Q. Do you have a recollection of the discussion?

A. The detail of the discussion, no.

Q. Do you know what the text means, so?

A. What the text means

Q. "A weighting mechanism was agreed prior to the closing date for quantitative purposes as evident from Table 17 and 18" as evident.

A. Yes, I took it that that was referring

Q. Perhaps I am missing the point.

A. I take it it's referring to the weighting at the level of the selection criteria which had been agreed initially in I am not sure, May or June, and subsequently revised in July.

Q. Because, can I take it, as you have said, that there was no discussion subsequently in the PTGSM about the quantitative weightings which had been agreed and which were in the evaluation model at Annex 3 on the first draft evaluation report?

A. The subweightings at indicator level. Following the June agreement, there was no discussion that I am aware of of the subweightings at indicator level.

Q. They were adopted, and they are contained in the first draft evaluation report; isn't that right?

A. Yes, for the quantitative model, that's correct.

Q. Andersen is talking about what was adopted that weightings were adopted for the quantitative purposes, as evident from these tables here, 17 and 18. Very good. We can understand the English ourselves. I am looking for your view on it and what transpired.

Because, being totally totally respecting the descending order of the criteria and the weightings

applicable to them, if you apply the subdivision for the indicators within each criteria here, but more particularly for the criteria market development and the dimensions under that, financial key figures would be twice as significant as market development on the model that was adopted, isn't that right, the weightings in the model that was adopted? And the effect of that, if we look at it, would have been twice the effect of that would have been to put Persona as the applicant which came out on top in relation to that particular criteria, the first criteria in the Government paragraph; isn't that correct?

A. Well, I mean, I haven't done the exercise

Q. It's a very simple sum. They come out ahead

A. Sorry, what you are talking about, though, am I right in saying, is you are talking about a breakdown at indicator level

Q. Yes?

A. of weightings of the weightings for the quantitative model? And in applying that breakdown at indicator level in the qualitative model, that's what I understand you are saying.

Q. Andersen says here, this is what Andersen says here, "A weighting mechanism was agreed prior to the closing date for quantitative purposes as evidence from both Table 17 and 18." Now, all that's evident from Table

17 and 18 as regards weighting is a heading "Weights"

and actual weightings.

A. Yeah.

Q. And Andersen is saying that that was what was agreed

prior to the closing date, as I understand the text

and the tables. Otherwise they don't seem to come

together at all.

A. My understanding is that we had agreed a weighting

formula at the level of the selection criteria.

Q. I understand that. I am asking you to put that aside

for the moment. I am asking to you look at this

document and what it states. And do you agree with me

that if Andersen doesn't mean that, it means nothing

at all? The text is obviously referring to the tables

and the weights in the tables, and he is referring

them back to the quantitative weightings which were

agreed prior to the closing date at the level of, as I

am saying here, not those agreed for the selection

criteria but those agreed for the indicators giving

rise to the dimensions?

A. But the weightings agreed in the quantitative model

were agreed at the level of indicators, so that they

were agreed a specific weighting was agreed at the

level of each of 14 indicators. It's not possible to

apply that weighting model in the qualitative

evaluation which had 56 indicators. Because if you

take the weightings for example, in the

quantitative model, there were two indicators under the financial dimension, and if you took the weighting assigned to those indicators within the financial dimension and applied that within the qualitative model, then you would have to ignore the other indicators in the financial dimension.

Q. No, I am asking you here, first of all you can give the explanation I am asking you here, doesn't this mean, isn't this what Andersen is saying here, that these were the quantitative because this is very significant, and it's why I want to bring you to where we started just before lunch, so where somebody took the trouble of changing the historical document, and it would appear, it would appear that the purpose of changing that historical document was trying to make it match this particular table, which you agreed it appeared to match this particular table, because, if you apply the table which is attributable to the text that is, those adopted for the quantitative Persona would have emerged above Esat Digifone on the most important criteria, which was the first criteria of the Government?

A. If you applied a different weighting model.

Q. Now, this where this 10, 10, 10 split came from is extremely important for the Tribunal to understand, because it appears not to have been understood by a number of members of the PTGSM, and perhaps to this

very day not understood by a number of them. And applying your own reasoning this morning to how you might have arrived at some sort of a judgement to give you the bottom line on Table 17, do you understand, you said you would have looked at the various criteria in descending order; but really the significant ones here were the top three, and you had a situation where they were the same on Number 1, the Number 1 criteria; Esat Digifone were, you said, a grade and a half higher on technical; and that in relation to tariffs, which was the third in descending order, that Persona were a grade ahead there. But they were the three big hitters, as it were, the licence payment, and you went down through the others, but they were the three big hitters, which allowed you to form a judgement to arrive at a bottom line.

A. Yeah.

Q. Now, if it was the situation that, as Andersen appears to be describing in the text here, that it was the weights adopted for the quantitative model was to be the breakdown in these tables, as I read it, then you apply different weightings; and the effect of that would, of course, be, there is no doubt that Esat Digifone still come out ahead in relation to the technical matters.

A. Okay.

Q. There is no doubt and we'll take it a grade and a

half that Persona come out a grade ahead on the tariffs. It's in a lower order than the technical matters, but there can be little doubt but that Persona would have come out in relation to the first criteria head, which, in the exercising of a judgement I am not necessarily saying that the judgement would necessarily be exercised on the basis that Persona are the successful applicant, but that in arriving at a judgement, it makes it impossible to separate them in those circumstances; that that is the only rational way you could view it, if that were the case.

If Persona came out ahead on the first criteria, say, by close to a grade, or even call it a half a grade, and Esat Digifone came out ahead on the technical by a grade, grade and a half, and then Persona came out ahead in the tariffs, say, by a grade, you couldn't separate them, I am suggesting.

A. I can understand the point that you are making.

But

Q. That is the concern

A. Is the origin you have talked about the application of a different weighting within the first criterion; is that correct?

Q. Yes. Because in the quantitative model, you see, it was broken down: 7 and a half, 15, 7 and a half.

Now, that came to 32 and a half, but even normalising

it, or forget about it, calling it 30, nevertheless,
in the quantitative, in the quantitative model,
financial key figures and this was agreed was to
be twice as important as market development and
experience of the applicant. That's what you agreed
in the quantitative model.

Do you see the point? And you had graded them 15, 7
and a half, 7 and a half sorry, 15, 10 and 7 and a
half, I am sorry, I beg your pardon, and that gave
rise to the sorry, the financial key figures were
15, the number of network occurrences, which was the
experience was 10, and the IRR and solvency were 7.5
each, so that comes to 15 for the financial key
figures, you see.

A. Yeah, but A3 and A5 were ranked equivalently on
financial key figures; isn't that right?

Q. A3 and A5 were ranked equally on financial key
figures.

A. Yes.

Q. On the experience of the applicant

A. The figures that you have read suggest a weighting of
10 for experience of the applicant.

Q. I have got it here, to be exact now. On the
experience of the applicant, they are ahead 5 to 4;
right? And on market development, A5 is ahead 5 to 4.

You see, all I am saying here is that in the question
of exercising the judgement, if you apply a different

weighting to 10, 10, 10, and you apply the weighting which was in the quantitative model, all it does, and perhaps this is the frailty of doing this particular exercise, all it does is that it gives you Persona perhaps shading it on the first criteria. That's all it does, and maybe Andersen understood this, and understood that it wasn't the way, and why he refers to distortions, perhaps?

A. I can see the view that you are putting forward.

But and I can see the difference that you are pointing to. But I suppose my point is that I don't see why, in any circumstances, one would wish to conceal or to or, sorry, what I am trying to say really is, notwithstanding what you are saying, I still can't see any case for anybody changing the historical record.

Q. That's what I am trying to understand. Other than to try and provide a justification for the text; do you see the point I am making?

A. Okay. Okay.

Q. Do you understand?

A. Yeah.

Q. That if the historical record is reflecting what's on Table 17 and 18

A. Okay.

Q. it conforms with the text?

A. Okay. My view is what the text should be referring

to, what the text should be referring to is the weighting model at the level of the selection criteria, and the breakdown of that weighting at the level of subcriteria was, as I understood it, decided by the technical sub-group in relation to the technical matters, and decided by the sub-group that dealt with the first criteria, in relation to market development, financial key figures, experience of the applicant.

Now, that decision clearly was taken in the light of a whole range of indicators representing three separate dimensions, and clearly a view was taken, clearly a view was taken that those dimensions were of equivalent weight.

Now, I certainly don't recall, in the context of looking at this, looking back at the breakdown of indicators within the quantitative model. I think if we had done that, I think that that would stand out in my mind. But as far as the breakdown of indicators in the quantitative model goes, again, even when we discussed the quantitative model, I don't recall any discussion of the weighting at subindicator level.

And I know it changed from May to June, so I am not clear on why.

So that particular breakdown, in my recollection, and it was adopted by the Project Group, but I don't recall any discussion of it, and I believe that

breakdown was developed, in Andersens' view, as to how the weighting should be broken down in the context of looking at four indicators. There was four indicators relating to the first selection criteria, so that view was taken in the light of those four indicators. But what I am saying here in relation to the 10, 10, 10, this view was taken in relation to three dimensions which, I presume, were judged to be of equal weight; at least that's what the decision appears to

Q. Can I ask you this: If that happened, it could only have happened in Copenhagen?

A. Which bit, sorry? The decision

Q. The 10, 10, 10.

A. I am telling you it happened in Copenhagen.

Q. Is there any note of it?

A. I can't say for certain that there is.

Q. Is there any record of it anywhere?

A. I can't say for certain that there is.

Q. And I suggest to you that makes it all the more confusing, then, in the context of the text which Andersen submitted with the tables, both in the first draft and the second draft, if he was present and a party to this discussion.

A. He was present and a party, because I mean, the 10, 10, 10 was obviously an essential element in creating Table 17 and 18.

Q. You see, I just want to ask you about you see, all

I am looking at at the moment, as I see it, appears to be from documents and from evidence I have heard is confusion surrounding matters in the Project Team about matters. And we have and I'll come to it in due course Mr. Billy Riordan's version of this second draft evaluation report, and he is putting in the weightings which were applicable in the quantitative into the position where the weights are on these tables. Perhaps perfectly understandable in light of the text.

A. The weightings agreed in the context of the quantitative model were laid out at the level of indicators.

Q. And they were added up then and brought back to the dimensions, isn't that right, and then the dimensions went to

A. Can you show me where they were added up and brought back to dimensions?

Q. No, they had to be, because they had to be referable to the criteria; isn't that right? They had to be referable they had to be referable to the criteria.

A. In the evaluation model that was agreed, the breakdown of the weighting model at the level of indicator was done by Andersens to reflect the weighting model at the criteria level.

Q. So they had to add up to the criteria they had to add up

A. They almost did.

Q. They had to. There is no two ways about that.

A. The point I am making is that they added up at the level of the criterion, but there was no decision in relation to the weighting at the level of dimensions.

Q. Well, now, this is a fair point. But what I want to ask you is this: The confusion which surrounded members, and continued on into April of 1996, because we have just looked at a document here and it hasn't been circulated yet, but I have it here, and it's a memorandum to you from Mr. Donal Buggy, and this concerned drafts that were being prepared of letters to unsuccessful GSM applicants. Do you remember that exercise of going on.

A. Well, I don't have the text that you have.

Q. I'll give it to you now.

A. Okay.

(Document handed to witness.)

Q. And this is just as regards confusion. You see, the draft letter is at the back. These weren't sent, I think, and can I take it, would you have drafted this particular document? I am not going to ask you about the whole lot of the letter; do you think you might have drafted it or assisted in the drafting, or was it drafted in your division?

A. I suspect that they were drafted in my division. They may well have drawn on information provided by

Andersens.

Q. Right.

A. But I can't say for certain just looking at it now.

Q. If you take the final paragraph in the first page, that's all I want to refer to.

A. Of the letter?

Q. Of the letter.

A. Yes, okay.

Q. "The table listing the selection criteria as outlined in the original competition documentation and their relative weightings as agreed in June 1995 and adjusted slightly on the 27 July 1995" that was an adjustment relative to the licence fee "In the light of the changed terms announced by letter on 14 July 1995 applied during the evaluation process is attached in an annex to this letter."

Then if you go to it, the attachment, and we have selection criteria, and we have their grades, and then we have the weighting applied. And it's the split is the 10, 10, 10; do you see that?

A. Yeah.

Q. Now, this wasn't sent. I am not making an issue about it perhaps being inaccurate in relation to one which applied through the process. But what I am going to ask you about is this, is confusion, because if you go to the front then, the memorandum for Mr. Donal Buggy?

A. Yes.

Q. And you see under the heading "General Comments on All Letters" that particular letter, there was one to each, and obviously that table will be given, because the grades would be different for each; but I think the test of the letter, it was the same in each case.

But do you see the third point there?

Paragraph 5, "Weighting applied".

"Was the split of marks for market development, financial key figures and experience in radio network architecture and network capacity specifically agreed, or was it just considered indicative?"

Now, it looks, even as of April 1996, Mr. Buggy was not aware that there had been agreement in relation to the weightings, these weightings?

A. Yeah, I don't know why that should be, because I mean, it's in the evaluation report that that was how the dimension

Q. No, it doesn't. The evaluation report well, what the evaluation report tells you, what the evaluation report tells you, I thought we agreed, was that the text that the weighting mechanism was the one agreed in relation to the quantitative. That's what the evaluation report tells you.

A. Yes. I am saying that the report should refer, because we are talking about the qualitative evaluation. So the weighting model in the quantitative evaluation is misleading, because that's

a full breakdown into subweightings at indicator level and a narrower range of indicators, so you can't transpose the entire weighting model from the quantitative model into the qualitative model.

Q. That's what you did.

A. But we took the weighting at the letter of the selection criteria and we decided a breakdown of that, which obviously was considered appropriate in the context of the qualitative model. I mean, in the quantitative model there was a breakdown which was obviously considered appropriate in the context of the range of indicators being evaluated. A view which was apparently slightly different was taken in relation to the qualitative model.

Q. Can we approach it this way: In relation to the just in relation to the quantitative, we'll just take the quantitative model for a moment, we know that Ms. Nic Lochlainn formalised matters to a very high standard; isn't that right?

A. Yes.

Q. And to a high degree. Where she didn't have direct access to people, she made contact with them and got their views and recorded it; isn't that right?

A. Yes.

Q. And all the members of the PTGSM agreed; they subscribed to it?

A. Subscribed to the revision of the weighting?

Q. First of all, they subscribed to the adoption of it; isn't that right?

A. Of the evaluation model?

Q. Yes.

A. Yes.

Q. In relation to the revision, she noted first of all, she noted and I am going to just get out a document here now which I remember it's Book 52, Tab 26.

Now, if you look at this is to Mr. Brennan from Maev Nic Lochlainn. "Re evaluation of tenders for the dimension competition". This is dated 21st July, 1995.

"The 7th meeting of the GSM Project Group on the 18 May 1995 approved the following weightings for the quantitative evaluation of the selection criteria for the GSM competition:" I beg your pardon; I'll get you a hard copy.

Do you see that?

A. Yes.

Q. This is for the quantitative evaluation. And then "Credibility of the business plan", 30, and then 20, 15, and down; is that right?

A. Yes.

Q. That was what was agreed for the quantitative evaluation of the selection criteria, according to Ms. Nic Lochlainn, who was present at the meeting and

recorded it, and is writing to Mr. Brennan.

Then it goes on: "Subject to further comments being submitted in writing to myself, the 8th meeting of the GSM Project Group approved the paper on the evaluation model presented by Andersen Management International, with the correction of one minor typo on page 6/21."

So that's the second model, the 21-page model that was adopted.

A. Yes.

Q. "No written submission was received, and so it can be taken that the model has been approved.

"A single copy of the evaluation model (marked with Fintan Towey's name) is being held securely in the division.

"Please indicate your approval of the above as a basis from which to proceed with the evaluation of tenders for the GSM licence."

Now, is that correct, what's stated there, that what was agreed on the 18th were weightings for the quantitative evaluation, and then what was agreed on the 9th was the adoption of the evaluation model?

A. I see what you are saying, and it refers to the quantitative evaluation.

My view is that the weighting model at the level of the criterion was not agreed solely for the purposes of the quantitative model of the quantitative evaluation. If we look at the evaluation model, and I

don't have it here, but I think it's useful to refer

to it.

Q. I'll get that.

The evaluation model, it's Book 54 we are taking

the one now that was adopted?

A. Yeah, the June one.

Q. It's in Tab 2 of Book 54.

A. Okay, on page 20, under the guide to the award of

marks in the qualitative model, it says "In order to

guide the mark given, a matrix has been elaborated

below. The dimensions and indicators are not weighted

ex ante."

Now, I took that to mean that such weighting as might

happen below the level of criteria would happen as the

qualitative evaluation was being done. So I mean, it

doesn't say weighting will not play any part here. I

mean, the actual inclusion of the sentence "The

dimensions and indicators are not weighted ex ante,"

it clearly implies the opposite.

Q. You may or may not weigh them, whichever the case, you

are exercising judgement.

A. It says they are not weighted ex ante, though. I

mean

Q. But where was it weighted during the process? During

the process that you have described, where was it

weighted?

A. Where was what weighted exactly?

Q. The qualitative evaluation, the dimensions and the indicators.

A. Well, at the level of the criteria, at the level of the criteria

Q. I know that

A. it was agreed. At the level of the dimensions, it was agreed in Copenhagen, the 10, 10, 10

Q. By you and Martin Brennan?

A. at the level of the technical sub-group, the 10, 10 breakdown again was agreed by the evaluators in Copenhagen.

Q. Right. Now, if that be the case, can I and you see the question Mr. Buggy is asking of you in April of '96 in that memorandum when he asks you, were these merely indicative, or were they agreed you see that question he raises in the memorandum?

A. Yes, sorry, I do see that question, yes.

Q. And I now want to just refer you to Book 42, Tab 121.

These are the verbatim notes of Margaret O'Keeffe of the discussion at the meeting on the 9th October.

A. I have Book 42.

Q. Tab 121. Margaret O'Keeffe's first of all, the minute I'll just check that there is nothing in the minute, but if you go to page 3 of Margaret O'Keeffe's note, under the heading "Weighting" do you see that?

A. Yes.

Q. And she notes somebody must have said at the meeting

"Table 17 different from agreed weighting." Do you see that?

A. Yes.

Q. And there is no response noted?

A. Yes.

Q. And there is no record anywhere else of what you have just described occurred in Copenhagen on the 28th, or explanation given to the members of the PTGSM, as far as I can see anywhere.

A. Okay.

Q. I then want to come back to, if what you are saying now is what happened, why isn't it in the page of the I am dealing with this particular draft why isn't it contained in page 50, Table 18, in the narrative? Why isn't that stated there by Andersen?

Very simply, a weighting mechanism was agreed at Copenhagen in relation to the qualitative matters, we have agreed them as such and such. A simple sentence.

Because I suggest to you, Mr. Towey, that didn't happen.

A. I am sorry, could you confirm to me again where we have, please.

Q. Let's slow down

A. Book 46, yes.

Q. Tab, whatever it is, Tab 46, page 50.

A. Yes.

Q. Which is in exactly the same form and contains the same text

A. Yes.

Q. as the first evaluation report?

A. Yes.

Q. It does not state there that what happened was that there was a weighting agreed in Copenhagen. A very simple sentence, for the purpose of the evaluation, or for the evaluation on the qualitative

A. Yes, yeah.

Q. It doesn't state that, does it?

A. No, it doesn't state that.

Q. But what it does state is that what is evident from these tables is the use of quantitative weightings which had been agreed prior to the closing date; isn't that right?

A. It does, yeah.

Q. And that is for dimensions; isn't that right?

A. I don't think so.

Q. Okay. I won't add them all up again. We have them.

A. I mean, I am not questioning the fact that the weighting of indicators in the quantitative model can be totalled to imply a weighting at the level of dimensions.

Q. It's common sense.

A. And I am not disputing that, in the context of the quantitative evaluation and the limited number of

indicators between which the available marks were being broken down by Andersens.

Q. I understand the point you are making.

A. But a different decision was taken into relation to the qualitative evaluation.

Q. Where is that recorded?

A. But I am telling you

Q. Sorry, when something else is specifically recorded, something quite different is recorded in this document, isn't it?

A. But the point I am making to you is that you could not take the weighting model, the entire weighting model for the quantitative evaluation and apply that in the qualitative evaluation, because if you did so, that would take, for example, I think it's 3.75 marks for one of the market penetration scores

Q. That's it

A. 3.75 for another market penetration score, but if you do that and you carry that into the qualitative evaluation, you run out of weighting at the indicator level for all of the additional indicators, so that model agreed, broken down at indicator level, doesn't make sense in relation to the qualitative evaluation.

Q. Okay. Now, if you look at the indicators, you look at the dimensions they represent. I think we agree on that, don't we? That's common sense, what you have to do: Look at the indicators, you bring them back to

dimensions and what they represent?

A. Yes, I understand.

Q. That's just first-principles stuff.

Now, with the exception, I think and I just have to

check it again with the exception of the

application of 10, 10, 10, that split there on the

first criteria, you did in fact use the weightings

from the quantitative evaluation model in respect of

the others?

A. Okay, I mean, I think it only arises actually in

relation to the technical one, so in two instances

Q. In two cases where this question arises?

A. That's right. So I mean, I can't say whether, in the

case of the technical subdimension, that that was

coincidence or whether that was

Q. You see the problem. Your explanation there that you

could have run out of indicators. That could have

happened in the technical side as well, couldn't it?

There are four indicators, I think, in the I'll

just get those on the technical side radio network

architecture, 6 indicators, network capacity 4.

Look, what is described here, from your evidence, is

not what happened; isn't that right? What's described

in the text here is not what happened, you say, in

Copenhagen?

A. What I am saying is that we did not take weighting,

the entire weighting model from the quantitative

evaluation, nor should we have done.

Q. Hold on a second, what I want to ask you is this.

What you described you did, you took the quantitative
you took the weighting from the quantitative model
for here; that's what's described in the text.

A. Yes.

Q. You are saying that's not what happened; that didn't
happen?

A. Yes.

Q. Did you ever say to Andersen "That's wrong"?

A. I don't recall.

Q. When the issue arose on 9th October, and Margaret
O'Keefe's notes that somebody said "Table 17 different
from agreed weightings", did you ever say what
happened and what Andersen is saying here is wrong?

A. I don't recall that meeting in that level of detail.

Q. This is a huge thing; this isn't a level of detail.

This is a huge thing. This is the crunch point, as
far as you were concerned. This was the crunch point.

A. I am not saying it's not important. I am saying it's
7 or 8 years ago.

Q. I understand. That's a fair point.

Perhaps if we go to it just may be of some
assistance to you if you go to Appendix 2 in this
particular evaluation report.

A. Appendix 2, yes.

Q. Now, if you go to page 4, paragraph 2.4, the

evaluation model and techniques. And he describes "Prior to the closing date the PTGSM had discussions on how to evaluate the applications. It was agreed to proceed as follows:

" the general method to be used is the so-called best application method, which is often dubbed "beauty contest". This method has been recommended repeatedly by the Commission and in its Green Paper on mobile communication is the best among several licence methods. Basically this method requires that the nominated and selected winner is the best application.

" best should be measured against the criteria outlined in paragraph 19 of the RFP document. More specifically, each criterion has been broken down into dimensions and indicators. In addition, the PTGSM adopted a weighting of the dimensions, which was in compliance with the descending order of priority by which criteria of paragraph 19 of the RFP document were listed."

Now, I suppose you could have mentioned it there, what you have just described as happening in Copenhagen; that's one place you might.

Then if you go to, say, the bottom of page 6, "The qualitative model differs from the quantitative in that it allows a more holistic comparison of the critical elements of the applicants. In accordance

with the evaluation document agreed prior to the close of the competition, the indicators for the model under the 10 dimensions were expanded to a total of 56, taking account of critical but not non-quantifiable aspects of applications such as performance guarantees, cell planning, market research, understanding of roaming, special tariff provisions customer care, etc. The techniques applied in the holistic evaluation can be described by a mainly heuristic methodology as follows:

Assessment by consensus among the evaluations.

Elaborative evaluation analysis by means of qualitative and quantitative methods.

Award of marks, (rather the scoring by points assuming an interval scaling) and averaging of marks by consensus. This is furthermore substantiated by the marking procedure and techniques summarised below."

Now, the marking of the applications and the nomination of the best application. The members of the sub-groups were drawn from the overall Project Group according to expertise relevant to the dimension under discussion in order to maximise the relevant qualifications behind each mark awarded.

"The process involved the award of marks to each application under each of the 10 dimensions. The marks under each dimension were developed through an assessment of the marks for each of the relevant

indicators, dimensions and aspects. The process necessarily involved some degree of implicit weighting of the indicators. The result in each case was arrived at through a process of discussion consensus with each of the sub-group."

Now, isn't that another obvious place where you might have mentioned that you had fixed on a certain weighting in Copenhagen?

A. I am not sure if that would be the appropriate place.

Q. Well, very good. Whether it's the appropriate place, but I can assure you that the methodology doesn't describe it; very good. The methodology applied doesn't contain any reference to it. This particular text in the main report makes no reference to it, and the text in the main report makes reference to something completely different happening; isn't that right? Isn't that where we end up?

A. Sorry, when you say the text in the main report oh, you are talking about the reference

Q. The application of the quantitative model. Isn't that where we end up?

A. Well, the text where it refers to the weighting model for the quantitative model isn't an accurate description of what happened.

Q. And what I am suggesting, then, is that in order to try and make the whole report fit together, somebody altered a historical document, and that is at Appendix

3 of this particular draft, page 10 of that we have been through it already the weighting on it.

Somebody altered the historical document. And I am suggesting that it can only be to try and make the whole report knit together, and that's the only explanation.

A. I can see you are suggesting that there is something sinister at work, but what I am saying to you is that I believe actually it's quite clear what happened, and I don't think there is anything at all sinister about what happened, in that a breakdown of the weighting in the qualitative model was agreed; and we agreed it, I presume, for very good reasons.

Obviously, in the light of the line of inquiry you are now pursuing, it's unfortunate that it wasn't the reasons for it were not clearly declared. But I believe that they were good reasons and reasons that are objectively justified, and while I can't I can't see any reason why the historical document that we have spoken about would be adjusted, there is nothing sinister about what did happen in practice.

Q. Well, could I just inquire along these lines: If, as we have spoken before, you applied the actual weightings from the quantitative model do you understand?

A. Yes.

Q. I am suggesting to you that it would be impossible to

separate A3 and A5.

A. I mean, I haven't done the mathematics.

Q. I'll put it to you this way: It would have made it very difficult.

A. Okay, if a different weighting model had been adopted, okay.

Q. Do you know if you tried that by applying any numbers?

Do you know if that was attempted, adopting the quantitative weightings in Copenhagen?

A. No, no, no. If I understand your question, did we apply any other weighting model or did we consider any other weighting model? The answer is no.

Q. Can you understand so why Andersen would have it so 100 percent wrong in the report?

A. Well, I mean, my view of it is that it's an inaccurate reference to the weighting model at the criterion level. That's my view of it.

Q. And doesn't it become somewhat more worrying when you see the historical document being changed to conform with this particular table?

A. I can't explain that, but as I have said, you know, I believe there is nothing sinister about the decisions that we took. It's perhaps a little unfortunate that they are not recorded more clearly and the justification for them, but they were justified.

Q. Now, it's something perhaps I should come back to tomorrow, and I take your point as regards sinister,

but could it be that there was so much pressure on here, and I mean pressure from the Minister, that whilst there may have been confusion, and there is obviously confusion amongst other members of the PTGSM in relation to these matters, as we can even see from Mr. Buggy as late as April of 1996; that these matters, which could all have been discussed as civil servants might, in a calm, considered way, that as a result and this discussion about form could also affect substance, other people might come to a different view, that's of course always possible; isn't that so?

A. That may be the case.

Q. But that if it happened in that normal, calm, considered way by civil servants, free altogether from the Minister's desire to accelerate matters and drive it forward, that all of these matters might have been resolved satisfactorily and matters of this nature would not have to arise for consideration now?

A. Well, if we had taken longer, we may well have written a clearer report. I think

Q. You might also have written a different report you don't know, isn't that the answer to that? Mr. Buggy, even as late as April of 1996, still has concerns about that particular split?

A. I don't believe that we were working under undue pressure.

Q. Very good.

A. And what I felt we had produced was a report that fairly reflected the methodology that had been applied and the result that had been arrived at.

Q. If that is the case, we'll have to consider a line of inquiry, perhaps considering what you have described as not being a sinister approach, so that what might have been happening here was to make the shoe fit, in other words. That you couldn't separate them.

Andersen cautioned you against adopting this approach.

He opposed to begin with. He writes a report informing people of this, and he writes a report informing people that you adopted quantitative weightings, and then when people start discussing it at the meeting of the 9th, there appears to be no response at all when people say that different weightings were used than those agreed?

A. Well, I mean, my view is that Andersens agreed with what we had suggested in relation to the manner in which the evaluation criteria were grouped and the application of the weighting model. I have no recollection of Andersens indicating a concern which amounted to a qualification or a reservation about the outcome.

Q. What's that? What's that, but a qualification and a reservation such a calculation distorts the idea of a quantitative evaluation. Is that not a

qualifications

A. That's clearly a view that he didn't hold all that strongly, in the sense that in the sense that he agreed with our counterargument, that in order to arrive at a ranking that was transparently related to the selection criteria.

Q. If he agreed with your counterargument, why did he put a health warning in, if he agreed with your counterargument?

A. It's a very mild it's a very mild expression of a caution.

Q. Distorting something is a mild expression, saying that something distorts a view is a mild health warning, you think?

A. Well, I haven't looked at the final evaluation report.

Q. That's where things get a little bit more interesting, actually. And I'll come to that tomorrow.

A. Did Mr. Andersen change his view at that stage?

Q. The passage was removed.

A. By Mr. Andersen?

Q. No. That's where we want to come and discuss that's you had no debate with Mr. Andersen about this, did you? Or did you?

A. I am sorry, about ...?

Q. You sent him the changes, and I am going to come and talk about that in due course when we come to look at the textual amendments; all right?

A. Yeah.

Q. Now, if you could turn now to Tab 47. This is the appendices, and I am going to the second appendix again, the methodology applied, and ask you to look at page 4, and we have read that first portion first.

Then, if you go over the page to page 5, it goes "Essentially, the evaluators decided that all the results of evaluation should be presented in one comprehensive report as is the case with the main report such that the results of the evaluation, both quantitative and qualitative techniques should be presented in an integrated fashion. No changes were made in the memorandum, but it was decided that the qualitative evaluation should be the decisive and prioritised part of the evaluation.

"Furthermore, it became clear during the evaluation that a number of indicators in the quantitative evaluation were either impossible or difficult to score, e.g., the following:" Then he lists the four which were listed on the 4th September of 1995 as well at the meeting.

"International roaming, blocking and drop-out rate", which became performance guarantees, I think, isn't that correct? Tariffs, and the licence fee.

A. Blocking and drop-out was part of the technical evaluation.

Q. Sorry, I beg your pardon sorry, which one became

A. Blocking and drop-out rate formed part of the technical evaluation. It wasn't part of the performance guarantees.

Q. I think we can check that; I think it may have been. We can check it; it doesn't matter anyway. I think it was impossible to score it on the technical side, I think, but we'll come back to it in due course anyway.

I think there was a weighting, anyway, of 5 for that, I think. International roaming was 6.

Now, just going through these, and I am just trying to understand, the quantitative I think it was performance guarantees anyway. Blocking and drop-out rate of the indicator for quality of service performance which was proposed by the applicant.

That's on page 3 of the adopted evaluation model; that's neither here nor there for the moment. I'll come back to it. I am just interested

A. Sorry, the point actually is that blocking and drop-out rates were used as indicators for performance guarantees in the quantitative model, but in the qualitative model, they were used as indicators under the technical criterion, and performance guarantees were assessed in a different way.

Q. How were they assessed, so? Under what dimension or

A. Sorry, performance guarantees was a selection

criterion in its own right, and in that, we looked at the guarantees that had been given by or, yes, the measures proposed by applicants in order to underscore the commitments that they made in their applications, and that is what we evaluated under performance guarantees, which I think is probably consistent with what we set out as our meaning in relation to performance guarantees in, I think, the information memorandum of the 28th April.

Q. In fact there was a little bit of dispute about that. It's neither here nor there, but what happened was that people did inquire as to whether you had to provide a performance bond; isn't that right?

A. Yes.

Q. And the response to that was no?

A. I think it was that a performance bond isn't specifically required, or words to that effect.

Q. No, I suppose

A. Well

Q. Because didn't somebody mention it's a bit unfair nothing turns on it, but just that it's a bit unfair, and I use that in its broadest sense, rather than in a narrow legal or technical sense, a bit unfair to them penalize, when Esat Digifone said that they'd pay a million a month, or whatever they said, to penalize other fellows because they didn't say that or do something of that nature when they had been told

that they didn't have to that a performance bond wasn't necessary; but that's neither here nor there.

That's how that evolved, wasn't it?

A. The intention was that we'd leave it to applicants.

We weren't going to lay down that a performance bond wasn't required.

Q. Just looking at these. And then he goes on in the text: "Having realised this, the evaluator decided that the foundation for a separate quantitative evaluation had withered away." Do you see that?

A. Yes.

Q. Now, first of all, when did when was it decided that the quantitative evaluation, or the foundation for a quantitative evaluation, had withered away? You see, there was a quantitative evaluation done.

A. There was, yeah.

Q. And in fact, we saw further runs, but we'll take it there was a quantitative evaluation done; that was the one that was presented on the 4th September. So the foundation for a separate evaluation hadn't withered away, as far as I can see; it was actually done.

A. There was a quantitative evaluation done, but I mean, what Andersen is saying here is he is pointing to the flaws in the quantitative evaluation in terms of it being a model that could serve as an input to the decision. He is pointing to the inadequacies: "A number of indicators were either impossible or

difficult to score".

Q. I am going to come back to those in a moment and just take them one by one and see what problems it caused.

Because surely, and I am not saying this to be decisive, but to have an evaluation model which runs for about 16 or 17 pages about a quantitative evaluation, and to have that gone through page by page by the team, and for that to produce a result, and always been understood that it wasn't necessarily decisive and would be revisited or just to disregard it, it did give a ranking?

A. Yeah.

Q. And I know you expressed the view that I don't think you went so far as to say it was a discredited model, but an inadequate model, or the model itself

A. Wholly inadequate.

Q. Wholly inadequate, right. It did produce a ranking whereby Persona were ranked first; isn't that right?

A. Yes.

Q. We are just taking it one but on two occasions, but the one we are working from, the actual one that was run for the meeting of the 4th September, for example, Persona were first?

A. Yes.

Q. Also on what was run for, you think, for information purposes on the 20th, they were first in that as well,

isn't that right?

A. Yes, yeah.

Q. That was their ranking, anyway. And on the qualitative evaluation, Persona were ranked a very close second; isn't that right?

A. They were ranked second.

Q. As we see this particular as we see this particular model, or this particular report evolving, isn't that right? They were ranked

A. They were ranked second.

Q. They were ranked close second, as you say, a B and a B-up, isn't that right?

A. A B-plus and a B-minus.

Q. A B-up, whatever, B-plus, B-minus? How, therefore, do you suggest that the quantitative model was a totally inadequate model, when it produced Persona in such a position, and the qualitative analysis, taking into account 56 indicators, brought them to a position of a B against a B-up? How was it so inadequate?

A. Well, the quantitative evaluation was very restricted. It was very restricted. It looked at a very restricted number of indicators.

Q. But it was intended to be that. That's what the model was intended to be; isn't that right?

A. Well, I don't know that it was intended to be a very restricted model.

Q. It's what you adopted.

A. It was what was agreed.

Q. It's what you adopted, having gone through it with Andersens.

A. Yes, that's correct.

Q. And in fact, from the only record we have, you went through the quantitative evaluation model line by line with Andersen, effectively, spent a long time at it, and there doesn't seem to be any record of such a similar long discussion about the qualitative evaluation, although I concede you could have discussions in sub-groups, of course. Isn't that so?

A. Yes.

Q. I am just wondering, as a member of the public looking at it, and they see a quantitative evaluation producing a ranking, and they are told then that it's of no relevance; isn't that right?

A. Yes.

Q. And that's effectively what happened here; isn't that right? That was what happened in this process, just decided not to use it?

A. By the "that", it was effectively rejected, yes.

Q. And in effect, you just rejected the ranking in the quantitative evaluation; isn't that right?

A. Implicitly, yes, rejected it and its output.

MR. COUGHLAN: I'll perhaps finish there now, Sir.

CHAIRMAN: Eleven o'clock tomorrow.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,

THURSDAY, 15TH MAY, 2003 AT 11AM.